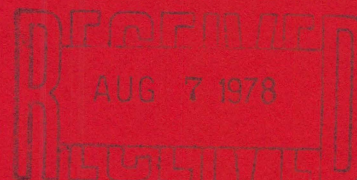


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CLARK
SUPREME COURT OF VIRGINIA



RICHMOND, VIRGINIA

IN THE
SUPREME COURT OF VIRGINIA

At Richmond

Record No. 780215

COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TAXATION,

Appellant,

v.

MILLER-MORTON COMPANY,

Appellee.

JOINT APPENDIX

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Appellee.

JOINT APPENDIX

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I

MILLER-MORTON COMPANY
a Virginia corporation

Applicant

v.

COMMONWEALTH OF VIRGINIA

Defendant

AMENDED APPLICATION FOR CORRECTION
OF ERRONEOUS TAX ASSESSMENT

Comes now the applicant, Miller-Morton Company ("Miller-Morton"), by counsel, pursuant to Va. Code § 58-1130, and on the following grounds applies for relief from erroneous State tax assessments:

1. Miller-Morton manufactures and packages in containers pet care products for sale and distribution in Virginia and other states and purchases pre-packaged health and beauty aid products for sale and distribution in the same geographic areas.

2. Miller-Morton distributes in Virginia and other states, without a cash charge to the recipient, samples of some of the products described in the preceding paragraph. Miller-Morton also distributes in Virginia and other states, without a cash charge, technical and educational literature describing the proper use of its products.

3. In November 1973 Miller-Morton received from the State Department of Taxation sales and use tax assessments, including penalties, amounting to \$39,031.14 for the periods September 1966 - December 1971.

4. From discussions with State Department of Taxation personnel, Miller-Morton understands that the assessments and

penalties described in the preceding paragraph were based upon Miller-Morton's nonpayment of sales and use taxes in connection with its products, containers, and technical and educational literature as described in numbered paragraphs 1, 2, and 3 above.

5. The State Department of Taxation erroneously assessed sales and use taxes against Miller-Morton for the periods September 1966 - December 1971.

WHEREFORE, Miller-Morton moves the Court to declare such assessments to have been erroneous and to grant Miller-Morton all such further relief as its case may require.

MILLER-MORTON COMPANY

By /s/ J. Waller Harrison
Of Counsel

Carle E. Davis
J. Waller Harrison
McGUIRE, WOODS & BATTLE
1400 Ross Building
Richmond, VA 23219

CERTIFICATE

It is hereby certified that a true and exact copy of the foregoing Amended Application for Correction of Erroneous Tax Assessment was mailed, postage prepaid, to Charles K. Tribble, Esq., Assistant Attorney General, Post Office Box 6-L, Richmond, Virginia 23282, on this the 22nd day of October 1975.

/s/ J. Waller Harrison
J. Waller Harrison

II. Amended Answer - Filed November 14, 1975

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I

MILLER-MORTON COMPANY
a Virginia corporation

Applicant

v.

COMMONWEALTH OF VIRGINIA

Defendant

AMENDED ANSWER

Now comes the Defendant, Commonwealth of Virginia, by the Attorney General of Virginia, and answers the Application served upon him and says:

(1) The Defendant admits the facts and allegations of Paragraph 1, 2, 3, and 4 of the Application.

(2) The Defendant denies the facts and allegations of Paragraph 5.

AND now having fully answered, the Defendant moves the Court to declare the assessment to be correct and valid and deny the relief sought in the Application.

COMMONWEALTH OF VIRGINIA

By Counsel

Andrew P. Miller
Attorney General

J. Durwood Felton, III
Assistant Attorney General
Post Office Box 6-L
Richmond, Virginia 23282

CERTIFICATION

I hereby certify that the original of the foregoing Amended Answer has been mailed to the Clerk of this Court for filing and true copies have been likewise mailed to Messrs. Carle E. Davis and J. Waller Harrison, McGuire, Wood & Battle, Ross Building, Richmond, Virginia 23219, counsel for Applicant, this 14th day of November, 1975.

J. Durwood Felton, III
Assistant Attorney General

III. Transcript of Proceedings

CRANE - SNEAD & ASSOCIATES
COURT REPORTERS
1103 EAST MAIN STREET
RICHMOND, VIRGINIA
PHONE 648-2301

1

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

3 DIVISION I

4
5
6
7 MILLER MORTON COMPANY

8 -VS-

9 COMMONWEALTH OF VIRGINIA
10
11
12
13
14

15 Complete TRANSCRIPT of the testimony
16 and other incidents in the above, when heard on January 6,
17 1976, before the Honorable Richard L. Williams, Judge.
18
19
20
21
22
23
24
25

APPEARANCES:

McGUIRE, WOODS & BATTLE, 1400 Ross Building,
Richmond, Virginia,

By: Carle E. Davis, Esquire,

Henry H. McVey, III, Esquire, and

Joseph C. Wool, Jr., Esquire, counsel for the plaintiff;

J. Durwood Felton, III, Esquire, and

Terrence A. Emerson, Esquire, Attorney General's Office,
Supreme Court Building, Richmond, Virginia,
counsel for the defendant.

I N D E X

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>
Warren L. Flannagan	27	63	80
Frank W. Lewis	83	90	
James Edwards, Jr.	97	100	102

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Reported by Eileen M. Beran.

1 JANUARY 6, 1976

2
3
4 NOTE: The court reporter having been
5 duly sworn, the case is called at 10:00 A.M.,
6 viz:

7
8 THE COURT: This is the case of Miller
9 Morton Company versus the Commonwealth of Virginia.

10 Is there any dispute in this case as to
11 the amount of the taxes that the applicant would
12 be entitled to receive back?

13 MR. DAVIS: Your Honor, there is. By
14 prior agreement, we have agreed that we would sub-
15 mit definite issues to the Court. The State has
16 not had an opportunity to verify the different
17 amounts involved after discussions as to what might
18 be or what might not be taxable. The Department
19 of Taxation would make a verification of the
20 amounts after the ruling of the Court, and determine
21 whether a tax would be refundable or not, and we
22 have previously agreed on that.

23 THE COURT: So, you can submit it on a
24 stipulation then, of facts?

25 MR. DAVIS: As to the amount, yes.

1 MR. FELTON: We would ask the Court to
2 decide on the issues at this stage rather than
3 to order a particular amount refunded pending the
4 final audit.

5 THE COURT: The details on that would
6 take forever, wouldn't it?

7 MR. FELTON: Yes, sir.

8 THE COURT: Would counsel want to make
9 opening statements?

10 MR. FELTON: Your Honor, I would like to
11 introduce a new attorney to the Court. This is
12 Mr. Terrence Emerson, who will replace Mr. Tribble
13 in our Tax Division.

14 THE COURT: It's nice to meet you. I
15 look forward to you settling some of these things
16 before they come up here.

17 Does counsel desire to make opening
18 statements?

19 MR. DAVIS: Your Honor, Miller Morton
20 Company will be represented by myself, Carla Davis,
21 my partners, Henry McVey and Joseph C. Wool, Jr.

22 Miller Morton Company is a wholly owned
23 subsidiary of A.H. Robins Company of Richmond,
24 Virginia. Miller Morton manufactures and markets
25 Sergeants pet products, and purchases and markets

1 Chap Hands and Chap Stick products, which are
2 manufactured by a related Robins subsidiary,
3 Chap Stick Company.

4 Miller Morton Company has its principal
5 office and warehouse in the Richmond area. Miller
6 Morton's central warehouse also operates a regional
7 warehouse for the State of Virginia, the District
8 of Columbia, and other eastern and southern states.
9 In addition, there are three other warehouses from
10 which goods are shipped from the central warehouse
11 to the regional warehouses for distribution by the
12 regional warehouse to the particular region served.
13 The other three warehouses are located in Des Plains,
14 Illinois, Dallas, Texas, and Los Angeles, California.

15 Each region has a regional manager, who
16 is in charge of sales. Under the regional manager,
17 there are several district managers, who answer
18 directly to the regional manager. Under the district
19 manager, there are salesmen, who have direct contact
20 with Miller Morton customers.

21 Customers are, for the most part, indepen-
22 dent wholesalers and mass merchandisers of Miller
23 Morton products.

24 At the warehouse, the actual, physical
25 handling of the products is done by A. H. Robins'

1 employees, whose services Miller Morton reimburses.

2 The administerial acts performed by the
3 men at the warehouse would be to receive, store,
4 and subsequently fill orders that come to them
5 generally by way of the Miller Morton salesmen in
6 the region.

7 In its application for correction of the
8 erroneous tax assessment, Miller Morton contests
9 the assessment and payments of a sales or use tax,
10 including penalties and interest amounting to
11 \$39,031.14, for the period September 1st, 1966,
12 to December 31st, 1971.

13 The assessment of tax involves five types
14 of taxable personal property, which are in issue.
15 First, product samples. Secondly, permanent pet
16 center racks. Thirdly, disposable free-standing
17 racks. Fourthly, disposable dual-purpose packages,
18 and finally, dog-care booklets.

19 Product samples are taken from the regular
20 inventory, and are not pre-packaged as samples.
21 In one isolated transaction, Miller Morton purchased
22 some specially prepared samples, pre-packaged.
23 Miller Morton sold those samples to A.H. Robins in
24 the state of Virginia. Because delivery and the
25 sale of those specially packaged samples took place

1 in the State of Virginia, Miller Morton is not
2 contesting those samples, and concedes taxability
3 with respect to that one isolated transaction.
4 In all other respects, except as I shall note, we
5 contest the assessment against any of those regular
6 samples.

7 Miller Morton, in some instances, dis-
8 tributed samples of pet center care racks and
9 distributed dog booklets in the State of Virginia.
10 The distribution and use of these items in the
11 State of Virginia is not being contested. We con-
12 cede those items. However, with respect to all
13 other samples, the dog-care booklets, pet center
14 care racks, delivery outside the State of Virginia
15 for use outside the State of Virginia, is the thing
16 contested. In addition, the assessment on all
17 disposable free-standing racks and disposable dual-
18 purpose packages is contested. However, I should
19 note in this, in other concessions, that beginning
20 in the year 1971, the company purchased some of the
21 dog booklets within the State of Virginia. As to
22 those purchases of the dog booklets in the State
23 of Virginia, with delivery taken here, there is no
24 contest as to those purchases within the state.
25 All of the other items that we mentioned other than

1 the samples--all of the items other than the
2 transaction with respect to the dog booklets in
3 1971--the items were purchased outside the State of
4 Virginia and brought into this state.

5 With respect to certain transactions, the
6 State imposes a retail sales tax, or a use tax. A
7 sales tax is designed to provide a license, or to
8 provide a tax upon one who engages in the business
9 of selling at retail, or who distributes for use
10 in the State of Virginia.

11 The sales tax also covers the leasing of
12 tangible personal property in this state. In addi-
13 tion, the sales tax is imposed upon any person who
14 stores for use or consumption in this state, any
15 article of tangible personal property.

16 The use tax is imposed upon the use or
17 consumption in this state of tangible personal pro-
18 perty, and secondly for the storage outside the
19 State of Virginia for use of that tangible personal
20 property in the State of Virginia.

21 Now, to narrow and to clarify the issues
22 before this Court, the applicant and the Common-
23 wealth have agreed that we don't have at issue, sales
24 tax involving a person engaged in the sale of pro-
25 perty at retail, or for distributing property in the

1 state, or for the leasing of tangible personal
2 property in the state.

3 Likewise, it is agreed that we are not
4 concerned in this case with storage outside of
5 Virginia for use or consumption in the State of
6 Virginia.

7 The main item, and the principal item
8 that we are concerned with, revolves around the
9 terms "use or consumption in this state -- use or
10 consumption in this state".

11 The provisions, with respect to the sales
12 tax and the use tax, are similar. Under the sales
13 tax, the tax is applied against the person who
14 stores for use or consumption in this state. The
15 use tax is assessed against the person who uses or
16 consumes in this state. To join issues, to deter-
17 mine whether under the Virginia Code, there is a
18 taxable use or consumption in the State of Virginia
19 with respect to the enumerated five types of personal
20 property -- that is, the product samples, the pet
21 center care racks, the disposable free-standing
22 racks, disposable dual-purpose packages, and the
23 dog booklets.

24 Now, the applicant urges that sales tax or
25 use tax doesn't apply because there is no taxable use

1 or consumption is this state. Miller Morton has
2 four regional warehouses. Three are located outside
3 the State of Virginia, in California, Texas, and
4 Illinois. The fourth regional warehouse is located
5 at the central warehouse in Richmond. With respect
6 to the three warehouses located outside of the
7 State of Virginia, the decision to withdraw a sample
8 is made by the salesmen in the region. The delivery
9 of the sample is made in the particular region. The
10 disposable free-standing racks, or disposable dual-
11 purpose packages and dog care booklets are ordered
12 generally by the salesmen outside the State of
13 Virginia, and in the regions, and delivery of these
14 items are made from the warehouses in the regions
15 to fill those orders.

16 The pet center care racks are ordered from
17 outside the State of Virginia, and are shipped by
18 common carrier to various merchandisers throughout
19 the country. Now, in Richmond, with respect to our
20 warehouse here, outside the State of Virginia, the
21 salesmen will place the orders for the goods, will
22 determine the use of a sample, and when a sample is
23 to be made, the free-standing racks, the dual-purpose
24 packages, the pet center care racks, will be delivered
25 pursuant to orders made outside the State of Virginia

1 by common carrier from the State of Virginia.

2 Likewise, the dog booklets are also ordered from
3 outside, and sent from the central warehouse with
4 respect to this region.

5 Now, in making the assessment, the Tax
6 Commissioner has failed to give consideration to all
7 provisions of the retail sales and use tax rules.
8 The Commissioner refers only to the definition of
9 use under Section 58-441.3 of the Code, which pro-
10 vides in part that use means and includes the
11 exercise of any right or power over tangible personal
12 property. Stopping at this point, the Commissioner
13 concluded that the mental process or decision to
14 provide samples to ship dog booklets, to ship pet
15 center care racks, to utilize disposable free-
16 standing racks, and disposable dual purpose packages,
17 that this decision, this mental process, plus the
18 withdrawal from inventory of these items, constitute
19 taxable use of tangible personal property. It is
20 this failure to consider further provisions of the
21 act which causes error.

22 Section 58-441.6 of the Code, which follows
23 the section describing use, provides for certain
24 clues and examples in part as follows: The terms
25 use, storage, and consumption shall not include --

1 and here the section sets forth certain items with
2 respect to the manufacture of certain accepted items
3 of the manufacturer, and then the section goes on --
4 in addition to the exclusions and exemptions set
5 forth in the preceding paragraph relating to the
6 manufacture of the accepted items, it goes on to
7 say, such terms as storage, use, and consumption
8 shall not include the following -- and, Section R,
9 Sub-Section R of that section, 58-441.6, provides
10 delivery of tangible personal property outside this
11 state for use outside the state -- an example for
12 the delivery of tangible personal property outside
13 the state for use outside the state is specified.

14 It is applicant's position in enacting
15 Sub-Section R of Section 58-441.6, which follows
16 the section defining use, that the law accepts
17 delivery made directly to points outside the state
18 whether use or consumption is to be outside the
19 state, and it has the effect, because of that
20 exemption of providing that the term use is limited
21 and restricted to the confines, use and consumption,
22 for the confines in the State of Virginia.

23 Now, if you look at the Code, to otherwise
24 look at Sub-Section R, it's a complete nullity when
25 the State of Virginia stops at the definition of use.

1 If the law provides, and the State contends, if the
2 law provides that a mental decision or process to
3 ship goods out of the state and the withdrawal of
4 inventory to complete that shipment out of state,
5 if that constitutes taxable use -- the simple mental
6 process plus the withdrawal is a taxable use with-
7 out completing the exemption, the delivery of those
8 items.

9 Judge, it's submitted that the decision to
10 deliver out of state -- the withdrawal of inven-
11 tory must be made before there can be a delivery
12 out of state, and certainly, the delivery is meant
13 to eliminate any use in the State of Virginia. It
14 is submitted that the decision to deliver out of
15 state embodies the term when we set aside the
16 merchandise according to the mental process to
17 deliver out of the state. We submit that delivery out
18 of the state includes the terms of withdrawal and the
19 decision, the intent to deliver out of state. Surely,
20 there can be no delivery of property out of the state
21 without an intent to deliver, and without setting
22 aside a product for delivery.

23 The definition of use is restricted, and
24 limited by the exclusion provided in 58-441.6 R,
25 and the items at issue are not subject to the Virginia

1 sales or use tax. Secondly, the sales tax is
2 applicable to a person who sells tangible personal
3 property to a consumer. The holding of property
4 for delivery and sales to a wholesaler who sells to
5 a retailer or consumer is not a taxable use. Now,
6 it is our contention, with respect to the disposable
7 free-standing racks, and disposable dual-purpose
8 packages, that such items are part of the product
9 that is sold by Miller Morton to a wholesaler who in
10 turn sells to a retailer or consumer, and that such
11 items being, part of the salable product, are not
12 subject to the tax. Thirdly, it is contended that
13 the category of items that will be brought into
14 evidence here, referred to as the disposable dual-
15 purpose packages, and with respect to the shelves
16 and brackets attached to the free-standing disposable
17 racks, we contend those type of items fall within
18 the exemption of the manufacturer under the first
19 paragraph of Section 58-441.6, which provides in
20 part, that sales at retail, use, and consumption, shall
21 not include materials, containers, labels, and
22 similar items, which are used for packaging tangible
23 personal property.

24 We submit that these items, the dual-purpose
25 packages and also the shelves and the brackets on the

1 free-standing racks, are part of the packaging
2 material, and come under this exemption for
3 manufacturers.

4 Thank you, Your Honor.

5 THE COURT: Mr. Felton.

6 MR. FELTON: May it please the Court, I
7 apologize for the hoarseness that the Court will
8 have to put up with this morning.

9 Before I begin my argument, I would like
10 to hand the Court a copy, or a reprint of Title
11 58-441, which is the Retail Sales and Use Tax Act,
12 a copy of regulations promulgated under that section,
13 because these are the sections we will be dealing
14 with today, and in this case.

15 The taxpayer has brought this action
16 pursuant to Section 58-1130 of the Code, which
17 provides that any taxpayer who feels he has been
18 erroneously assessed, may file an application in
19 the Circuit Court seeking a correction of the
20 erroneous assessment.

21 The Virginia Supreme Court has decided in
22 a line of cases dealing with 58-1130, such as this,
23 the burden of proof of the erroneous assessment is
24 clearly upon the taxpayer, and the taxpayer must
25 carry that burden convincingly in order to be

1 entitled to an order directed under Section 58-1134
2 of the Code correcting the tax. In this case, I
3 don't believe the facts will be seriously in dis-
4 pute.

5 This is perhaps the third round in a
6 series of conferences in an effort between this
7 taxpayer and the Commonwealth to get together, the
8 first being at the time of the audit between persons
9 in our Department of Taxation and Miller Morton's
10 executives, the second being in the application
11 filed pursuant to the 58 Section of 1118 by the tax-
12 payer with the State Tax Commissioner, asking the
13 Tax Commissioner to review the assessments and
14 determine its correctness. That conference resulted
15 in a consideration by the Tax Commissioner of all
16 of the contentions that the taxpayer makes now as
17 well as some that have not been made yet by the tax-
18 payer. The Tax Commissioner, after considering in
19 detail all the possible exemptions, bases these upon
20 which the taxpayer contends, or could contend, that
21 he was compelled to deny those exemptions and assess
22 the tax.

23 If Your Honor please, I think Mr. Davis is
24 accurate in categorizing the grounds of items in-
25 volved in this case. There are essentially five

1 items. The contest I have with him is not over
2 the categorization, but over the use that the items
3 are put to, and the moment at which that taxable use
4 occurs. The items generally involve, first, samples,
5 and these are samples that are stored in Miller
6 Morton's central warehouse in Richmond, Virginia,
7 and then distributed to the regions in ultimate
8 free distribution to persons who might purchase the
9 products.

10 The second item is the display rack. These
11 display racks, both of the free-standing variety,
12 the large, which presumably we have here, and the
13 smaller free-standing display racks, are also stored
14 in the Richmond warehouse of A.H. Robins, and sub-
15 sequently withdrawn, and passed on free of charge
16 to merchandisers, who will presumably carry the
17 pet care products that will be displayed at the
18 retail levels on the stands, and the last category,
19 of course, are the pamphlets. I think the Court
20 will see a sample of those pamphlets. Suffice it
21 to say, they give advice on how to purchase a dog,
22 how to take care of a dog, and things such as that.

23 All of these items are provided free by
24 Miller Morton without charge to the merchandisers
25 who will sell products in the use of these items that

1 are involved today. Evidence of this fact is that
2 for example, one of these pet rack items, one of
3 the racks used to display dog care products, is
4 sold pre-packaged with a number of dog care pro-
5 ducts, and the fact is that you can buy, if you are
6 a merchandiser, that dog care package consisting
7 of the rack and the products at a lesser price than
8 you can the dog collars alone. It's clear from all
9 the evidence in this case that these items are not
10 resold to the merchandisers, but are passed on as
11 a commission amenity to aid in the advertising of
12 the items Miller Morton is engaged in the business
13 of selling, and under the cases cited, it is per-
14 fectly a clear advertising expense, and items that
15 are used in that context are deemed to be used and
16 consumed by the person in the position of Miller
17 Morton, and not used for resale to someone else.

18 Mr. Davis and I have discussed the legal
19 issues that are involved in this case, and will at
20 the conclusion of the evidence, request that the
21 Court give us an opportunity to file briefs that
22 will detail the cases that are involved with the
23 issues presented today, and I will look forward to
24 the opportunity to collect the cases and present to
25 the Court the cases that hold that transfer of items

1 such as these for commercial advantage constitutes
2 use by the party transferring Miller Morton rather
3 than by a sale for resale.

4 Mr. Davis categorizes the Sales and Use
5 Tax Act as being ultimately intended to impose a tax
6 on the retail consumer and to an extent that is
7 correct, but it's unduly restrictive, if Your Honor
8 please, to review the sales tax as applicable only
9 to the final retail transaction that occurs when a
10 consumer goes into a store and buys an item off a
11 shelf. The truth is that the statute is structured
12 in such a way under 58-441.4 and 58-441.5, which
13 are the two that deal with sales and use tax respec-
14 tively, that a transfer of title or possession con-
15 stitute an event upon which sales or use tax as the
16 case may be, is properly imposed unless that transfer
17 is for an exempt purpose, such as retail or for
18 delivery for use outside the state, and so the
19 principle that we are dealing with today is that
20 Miller Morton is subject to a use tax on the transfer
21 of items to it upon which no sales tax was collected
22 unless they can show a resale exemption or a delivery
23 for use outside the state, or some other kind of
24 exemption like that, that would prevent the imposi-
25 tion of use tax.

1 The reason I say that, if Your Honor
2 please, is that the imposition language is perfectly
3 clear in this regard. By imposing a tax upon the
4 user, or the consumer of tangible personal property
5 within the state -- and, Section 58-441.3H defines
6 a use that is taxable under the preceding section
7 to mean and include the exercise of any right or
8 power over tangible, personal property incident to
9 the ownership thereof.

10 Now, it's perfectly clear from these
11 sections what is taxable, and the use tax contention
12 is a first use of tangible personal property in
13 assessing where no sales tax was collected, and
14 that first use consists under the definitional
15 section of the exercise of any right or power over
16 tangible personal property incident to the ownership
17 thereof. Now, the specific use in Virginia that we
18 are dealing with in each of these categories, is
19 the bringing into Virginia of these items, and the
20 storage of them in the central warehouse by Miller
21 Morton for a purpose other than resale by Miller
22 Morton, who is deemed to be, as I have previously
23 mentioned, in our view, the ultimate consumer, and
24 for a purpose other than delivery outside Virginia
25 for use outside Virginia.

1 Now, contrary to what Mr. Davis has
2 suggested, we have not stopped only with the
3 definitional section here, and restricted our
4 analysis to that point. We have gone farther.
5 The word that we must focus on in Section 441.6,
6 that exemption section, is for use outside the
7 state. Now, I mentioned to the Court just a
8 moment ago that the use that we are dealing with
9 under 441.3H, the definitional section, is a first
10 use, and the first use that we are dealing with in
11 this section is bringing the tangible personal
12 property into Virginia to this general warehouse
13 for later distribution outside the state, and so
14 when we deal with 441.6--

15 THE COURT: Does use mean functional use?

16 MR. FELTON: Any exercise of a right inci-
17 dent to ownership, and it's a broad definition.

18 441.3H says use means and includes the
19 exercise of any right or power over tangible per-
20 sonal property incident to the ownership thereof,
21 possession with title. Taken together, and without
22 restricting myself to say they are the only items
23 that constitute use, but they are both present in
24 this case. Those two items together constitute
25 the use we are dealing with on the facts of the

1 Miller Morton case. They have title to the property,
2 and they bring it into Virginia, and they have posses-
3 sion in Virginia when they bring it into this state
4 for warehouse purposes. These two factors taken
5 together means first use occurs here, and unless
6 they can show a specific statutory exemption, they
7 are not entitled to it.

8 There is one more section, if Your Honor
9 please, that bears on this, and that is the Section
10 58-441.8 of the Code, which bolsters this view that
11 a first use is the use we are dealing with, because
12 it says that in subsequent jurisdictions, if a sale
13 or a use tax is imposed upon subsequent transfers,
14 that a credit should be given for prior sales or
15 use taxes paid. Now, Virginia's credit statute,
16 when applied means if Miller Morton had this central
17 warehouse in another jurisdiction, and use tax was
18 imposed at that jurisdiction at 4 percent or higher,
19 that Virginia would not be entitled to tax a sub-
20 sequent use when a product is distributed in Virginia,
21 and the reason is because this credit provision re-
22 quires that Virginia give a tax credit to the tax-
23 payer for the tax imposed by prior use or on a
24 prior sale in another jurisdiction, and this credit
25 provision is not peculiar to Virginia. In fact,

1 it's within the general scheme of sales tax around
2 the country, and the effect is to mean that while
3 the first use is the use that is taxable, the tax-
4 payer will not be saddled with the second and sub-
5 sequent tax on subsequent uses in other jurisdic-
6 tions, and there is no allegation that Miller Morton
7 has been taxed doubly on the facts of the case.

8 Now, if Your Honor please, the exemptions
9 provide that they rely on 441.6R, dealing with
10 delivery outside this state for use outside the
11 state, and the resale exemptions that they contend
12 apply to these packages, and under a line of Virginia
13 cases, must be strictly construed by this Court.
14 The reason for that is fairly obvious. We are deal-
15 ing with a tax burden, and capable to all tax bases
16 in this decision, and when one taxpayer gets an
17 exemption, he is getting preferential treatment,
18 and preferential treatment means the burden will be
19 increased on everybody else. Therefore, the Court
20 has realized and recognized in a line of Virginia
21 cases, Golden Skillet versus Commonwealth, and in
22 our previous file, cites the remaining cases on
23 that authority. In those cases, the Court has
24 held a strict construction must be held on these
25 that Miller Morton is relying on in this case, and

1 that means if there is any doubt whether the
2 exemptions apply, that the doubt is tantamount
3 to denying the exemptions. Miller Morton has been
4 treated in this case in a way that is completely
5 consistent with departmental policies relating to
6 the imposition and exemptions of sales and use
7 transactions from the text, and we will offer
8 evidence this morning as to the administrative
9 interpretation accorded these as it applies to the
10 Miller Morton type facts. The reason for that is,
11 we are dealing primarily with statutory construc-
12 tion, and the Virginia Supreme Court has realized
13 in another line of cases that the administrative
14 interpretation accorded the Virginia Sales and
15 Use Tax Statute by the Virginia Department of
16 Taxation is entitled to great weight by the Court.

17 So, we will offer evidence this morning
18 of administrative interpretation, and the manner
19 in which the defendant applies use to these exemp-
20 tions, and we will ask that the Court give the
21 great weight required by the Supreme Court to its
22 interpretation in its analysis of the issues involved
23 here.

24 I think at this point, I have covered all
25 of the issues that we should be dealing with. I'll

1 be glad to expand on any questions for something
2 I have not made clear.

3 THE COURT: What is going to be the form
4 of the evidence? It looks to me that most of
5 this can be stipulated, couldn't it?

6 MR. FELTON: That is correct. If Your
7 Honor please, we don't intend to be lengthy. We
8 have tried to get together on stipulations, and we
9 have reached partial stipulations as to that.
10 There is some disagreement over the actual effect
11 of the withdrawals of inventory in other jurisdic-
12 tions. We contend that the withdrawals were
13 effected much in greater detail in Virginia than
14 the taxpayer is willing to concede.

15 THE COURT: All right. Call your first
16 witness, Mr. Davis.

17 MR. McVEY: If Your Honor please, at the
18 outset, and I think we can save some time if we
19 can introduce a Commonwealth's notice of assessment
20 reflecting the taxes for which the applicant is
21 seeking reimbursement, and the report which is
22 attached to it. In other words, the work sheets by
23 the Commonwealth, and if we could have that, and
24 I don't think Mr. Felton will have any objection to
25 that, then we can agree that the taxes sought to be

1 recovered have in fact been paid.

2 THE COURT: That will be received and
3 marked as Applicant's Exhibit No. 1.

4 MR. McVEY: Your Honor, we would like
5 to call Mr. Flannagan, please.

6
7
8
9
10 WARREN L. FLANNAGAN, a witness called
11 by the plaintiff, first being duly sworn, testifies as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. McVEY:

15 Q Would you state your name, age and your
16 address and occupation, please, sir?

17 A Warren L. Flannagan, 4702 Rolfe Road.
18 I'm Vice-President and Treasurer of the Miller Morton Company.

19 Q How long have you been employed by Miller
20 Morton?

21 A Twenty years.

22 Q What office, if any, did you occupy between
23 1966 and 1971, the period in dispute?

24 A I was Office Manager, Controlling Treasurer
25 and Vice-president.

W.L. Flannagan - Direct

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1 Q Were you familiar with the internal
2 production of Miller Morton Company during that period?

3 A Yes, sir.

4 Q Miller Morton is a wholly owned subsidiary
5 of A.H. Robins Company, is that correct?

6 A That is correct.

7 Q A.H. Robins acquired it when?

8 A February 15, 1967.

9 Q And, you were employed prior to A.H.
10 Robins acquiring Miller Morton, is that correct?

11 A Right.

12 Q And, you remain with them until this
13 day?

14 A Right.

15 Q Can you tell us, Mr. Flannagan, a little
16 bit about what Miller Morton does? Mr. Davis did explain
17 it, and maybe this would be leading, but Miller Morton is
18 a manufacturer and distributor of Sergeant's Pet-Care Pro-
19 ducts and also of certain Chap Stick Products, is that correct?

20 A That is correct.

21 Q With respect to the Sergeant's Products,
22 does Miller Morton Company manufacture those products?

23 A It manufactures most of the products.

24 Q Then, you buy some from contractors?

25 A Some are bought in contract packages.

W.L. Flannagan - Direct

29

1 Q And, the Chap Stick products, the Chap
2 Hands and Chap Stick, are purchased by Robins and distributed
3 by Miller Morton?

4 A That is correct. Miller Morton markets
5 the products.

6 Q I see. With respect to the production
7 of Miller Morton, is it divided into regional areas for the
8 purpose of--

9 A We have four regions, which conform --
10 you have a map there -- very much to the distribution
11 pattern of our regional warehouses.

12 Q I'm going to show you this and ask you
13 whether this map reflects the regional areas of operation
14 by the Miller Morton Company?

15 A Yes, that is correct.

16
17 MR. McVEY: I ask that this be introduced
18 as Exhibit No. 2.

19 THE COURT: This map will be received and
20 marked as Applicant's Exhibit No. 2.

21
22 BY MR. McVEY: (Continuing)

23 Q On this map, are the persons in the
24 region of Miller Morton indicated?

25 A We have a regional manager at each distri-

W.L. Flannagan - Direct

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1 bution center, Los Angeles, Dallas, Des Plaines, and Richmond.

2 Q Are these four distribution centers also
3 Robins distribution centers, as well as Miller Morton
4 distribution centers?

5 A They are Robins distribution centers
6 except for Richmond.

7 Q Did you have a separate warehouse here?

8 A We have a separate warehouse in Richmond.

9 Q Other than the warehouse in Richmond,
10 what personnel do you have in your regional offices in
11 Los Angeles, Des Plaines, and Dallas?

12 A We have a regional manager. We probably
13 have a secretary in each one of those branches.

14 Q What are the regional managers' responsi-
15 bilities?

16 A The regional manager has approximately five
17 district managers who would work under him, and the district
18 managers, of course, have salesmen. They work with them.

19 Q Does Miller Morton work from salesmen on
20 up to district managers, and then to regional managers, and
21 then back to the home office? Is that the chain of control?

22 A That is correct.

23 Q What are the salesmen's responsibilities?
24 What do they do insofar as Miller Morton is concerned?

25 A The salesmen are to call on accounts and
to sell our products.

W.L. Flannagan - Direct

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1 Q Mr. Davis has described in his opening
2 statement, Miller Morton's customers as being wholesalers
3 and mass merchandisers. I think the Court is probably familiar
4 with the wholesaler, but what does the wholesaler of your
5 products do?

6 A A wholesaler would buy our product, and
7 in turn, would sell that product to a retailer.

8 I'll give you an example. One account
9 here in Richmond would buy a product directly from us, and
10 distribute that product, or sell that product, to Shadwell
11 Drug or Broad Rock Pharmacy, or something like that.

12 Q And, when you talk about mass merchandisers,
13 who would that include?

14 A That includes people like K-Mart, Kresge's,
15 W. T. Grant, and other large discount operations.

16 Q Would it also include, insofar as Mr.
17 Davis' description is concerned, possible chain stores, such
18 as Safeway, People's, and A & P?

19 A Right.

20 Q All right, sir. Now, if we could turn,
21 Mr. Flannagan, to the specific products which are at issue,
22 as outlined by Mr. Davis and Mr. Felton, and if we could
23 address ourselves first to the samples, and if you would
24 for the purpose of examination, assume all my questions are
25 directed to the period that is in dispute, that is, 1966 to

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1 1971, and if you would, that would be helpful to the extent
2 that when I ask you these questions, that you refer to what
3 transpired insofar as Miller Morton was concerned during the
4 period that was in dispute.

5 A All right.

6 Q In respect to samples, does Miller Morton
7 have, other than the isolated incident that Mr. Davis des-
8 cribed in his opening statement, things that are packaged
9 as samples?

10 A We don't.

11 Q Who uses your samples?

12 A The salesmen will use the samples to pass
13 on to prospective customers.

14 Q For what use will the salesmen use these
15 samples?

16 A For example, a salesman might talk to a
17 new potential customer, and he may take in a flea collar
18 to show him, and he may leave it, or he may leave a dozen
19 flea collars, but this is a sample in the sense that you
20 might say samples, but it is not a specially prepared sample.
21 It's our regular -- what we would refer to as open stock mer-
22 chandise.

23 Q How did the salesmen in this period go
24 about acquiring those dozen flea collars, or packages of
25 Chap Stick?

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1 A He would acquire those just like as if
2 he sent an order in for a customer. Instead of for a
3 customer, he would send in an order for himself.

4 Q Well, is there any segregation on that?
5 Does a certain percentage of your inventory have to be used
6 for samples and the rest have to be used for general stock?

7 A None at all. There is no quota for samples,
8 and there is no certain amount of merchandise set aside for
9 samples. Samples are withdrawn from open stock.

10 Q From the regular inventory on deposit
11 at the regional warehouse?

12 A Correct.

13 Q And, to whom does he make that request?
14 By whom is his request approved?

15 A If it had to be approved, it would have
16 been the regional manager in the branch. Normally, it would
17 not have to be approved. He would submit his order just
18 as if he was submitting an order for a customer, and the
19 branch would have shipped, or would have shipped that order
20 to our salesman just like they shipped an order to a customer.

21 Q Well, how does the salesman determine how
22 many flea collars he needs, or how many Chap Sticks he needs?
23 Is that an individual decision?

24 A It depends on the salesman. Some salesmen
25 are going to use more samples than others.

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1 Q Does the salesman have any quota of how
2 many samples they may use?

3 A No.

4 Q Could a salesman request as many samples
5 of any type and of any number that he wanted?

6 A Now, of course, if he requested more than
7 maybe he should have, and the branch people recognize it,
8 they certainly might have shown that order to the regional
9 manager at the branch, and of course, he would have the
10 authority to ask the salesman why, and either approve or
11 disapprove.

12 Q Well, was any decision made in that
13 respect when a request was made on samples? Was any decision
14 made here in Richmond by Miller Morton personnel?

15 A No..

16 Q With respect to these various products
17 we are referring to, and you referred to the branch manager --
18 who is the branch manager?

19 A The branch manager is an employee of A.H.
20 Robins. The branch manager's function is an operational
21 function. In other words, he maintains the warehouse and the
22 building. He sees that the orders are shipped, and he sees
23 that we ship by the truck line that provides the best service,
24 and he is an operations man. That warehouse is his responsi-
25 bility, and the goods within it are his responsibility.

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1 Q Well, how does he determine the amount of
2 inventory that he may need of a particular product?

3 A Well, he has access to the inventory
4 records, and the sales statistics, and he has a monthly
5 ordering cycle that he will send to Richmond indicating
6 what his requirements will be for the next month.

7 Q And, that is a decision he makes based
8 on his judgment of what is in inventory and the statistics,
9 is that correct?

10 A Right.

11 Q To get back to the samples for just a
12 minute, approximately what percentage of your products are
13 used for samples?

14 A Well, during the period in question, I
15 think the highest of any year we had was one-half of one
16 percent of the total sales.

17 Q What was the lowest?

18 A One-tenth of one percent.

19 Q Does it fluctuate from year to year?

20 A It does.

21 Q Was there any decision made here as to
22 what percentage it should have been in any particular year?

23 A No.

24 Q Would the number of products used depend
25 on the individual request of the salesman in the field?

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1 A No, the amount of requests for samples
2 were so small that it was not a problem.

3 Q Insofar as how much was used, who made the
4 decision of how much to use?

5 A It was made by the salesman.

6 Q Except in the case where there was a
7 large request, whereas the regional manager might become
8 involved, is that correct?

9 A Yes.

10 Q Now, if we could, Mr. Flannagan, without
11 having to turn around and injure your back, we have got a
12 pet center behind you, and I would like for you to direct
13 your attention to the pet center, and I'm going to show you
14 a picture, and ask you whether in fact that is a representa-
15 tion of the rack which is now here in the Court, and whether
16 this rack is supposed to look like this picture when it's
17 properly stocked?

18 A That is correct.

19
20 MR. McVEY: If Your Honor please, we
21 won't burden the Court with the rack itself, but
22 we would like to put in this picture as evidence.

23 THE COURT: Mr. Simpkins was looking forward
24 to trying to figure out what to do with it. Sorry
25 you disappointed him, but I'll accept the substitute,

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1 and it will be marked P-3.

2

3 BY MR. McVEY: (Continuing)

4 Q Mr. Flannagan, who makes these pet center
5 racks, do you know?

6 A They are made by an outfit in the West.
7 I think it's in Illinois.

8 Q When those pet center racks are manufac-
9 tured, are they shipped to your regional centers, or how
10 are they shipped?

11 A Well, they are shipped mainly direct,
12 but they are shipped to Los Angeles and to Dallas also.

13 Q By the manufacturer?

14 A By the manufacturer.

15 Q All right.

16 A Now, let me back up, and say that during
17 the period in question, they were probably all shipped to
18 Richmond.

19

20 THE COURT: It all came to Richmond
21 during the period in question?

22 MR. FLANNAGAN: Yes, they all came to
23 Richmond.

24

25 BY MR. McVEY: (Continuing)

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1 Q What is the purpose of the pet care centers,
2 or the pet centers, as you call them?

3 A Well, it's a rack program that we have
4 that is used primarily in grocery stores to mass display our
5 products. It's just a new concept in selling pet products.

6 Q How do the pet centers, similar to the
7 one we have in court, and the one shown on Exhibit 3, get
8 into the retail establishments? Can you describe for us the
9 procedure by which that pet center gets from Miller Morton
10 to the retail establishment?

11 A We have what we refer to as pet merchandise.
12 We sign a contract indicating that they will accept our racks
13 and that they will place it in their store which they service,
14 and that they will keep the racks in good shape, and by in
15 good shape, I mean that they would keep it stocked so that
16 when a customer comes through the store who needs a flea
17 collar, that merchandise will be on the rack.

18 Q Do you enter into a formal agreement with
19 your merchandisers?

20 A We do.

21 Q I'm going to show you a contract document,
22 which says Miller Morton Pet Service Agreement, and ask you
23 whether this is a typical agreement entered into with the
24 merchandisers?

25 A Yes, it is.

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39

1 Q Is that the type of agreement in use
2 generally during the period in question?

3 A Yes.

4 Q All right.

5
6 MR. McVEY: Well, the agreement speaks
7 for itself, Your Honor, and I would ask that it
8 be introduced as Applicant's Exhibit 4.

9 MR. FELTON: I have no objection.

10 THE COURT: It will be received and
11 so marked.

12
13 BY MR. McVEY: (Continuing)

14 Q Under that agreement, Mr. Flannagan, does
15 Miller Morton upon entering into that agreement, convey a
16 certain number of racks to that particular wholesaler or
17 merchandiser?

18 A The agreement will not specify a certain
19 number of racks. When we enter into the agreement, we are
20 aware that initially this merchandiser is going to need,
21 say 100 racks.

22 Q Why do you need to know that before you
23 decide you are going to enter into the agreement? Do you
24 need to know that?

25 A Yes, because it's a monetary consideration.

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1 Q When you say a monetary consideration,
2 does any money change hands? Does the merchandiser pay
3 you for these racks?

4 A No.

5 Q Is there another consideration involved?

6 A There are other considerations.

7 Q What is the other consideration, Mr.
8 Flannagan?

9 A Under the program, when we assign a merchan-
10 diser, the final inventory that goes on that rack is given
11 to the merchandiser at no charge.

12
13 THE COURT: When you enter into these
14 agreements, is it for one rack or does it have to
15 be a quantity?

16 MR. FLANNAGAN: I would say that during
17 the period that we are discussing, that we have
18 entered into an agreement for one rack, but it was
19 a right odd situation. Generally, there are fifteen
20 to twenty or more involved.

21
22 BY MR. McVEY: (Continuing)

23 Q Well, if the merchandiser has other
24 customers after you have delivered to him the 15 or 20 racks,
25 are there any subsequent agreements, or is he just delivered

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1 additional racks as he needs them?

2 A As he needs them.

3 Q And, what is the purpose of determining
4 how many racks he needs initially insofar as Miller Morton
5 is concerned? Why do you need to know that? You said there
6 was a monetary consideration. What do the racks and the
7 monetary consideration have to do with the decision-making
8 process of whether you do or don't enter into an agreement
9 with the merchandiser?

10 A Well, as I said, we initially -- the
11 initial merchandise that goes on the racks is given at no
12 charge. We also generally are in a competitive situation
13 where we agree to pick up the competitor's products and pay
14 the merchandiser for the competitor's products in his ware-
15 house.

16 Q So, when you enter into an agreement with
17 the merchandiser, you have a fairly large outlay at the outset,
18 is that correct?

19 A Yes.

20 Q And, you want to make sure it's going to
21 be a money-making proposition for you before you enter into
22 that agreement?

23 A That is correct. I might add that we
24 generally try to determine what sort of weekly sales will
25 be involved, and what we might expect off of each rack.

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1 Q Before you enter into the agreement?

2 A Uhm-hum.

3 Q And, what are the general purposes of
4 the rack? What is it to be used for?

5 A The rack is used to sell merchandise.
6 You see, the racks don't require shelf space in the
7 store. The merchandiser can take that rack and place
8 it in a -- let's say, Safeway -- he can place it right
9 at the end of an aisle, and it doesn't cause Safeway
10 to lose any space in the store, any shelf space in the
11 store.

12 Q Is it designed to be used in that
13 way?

14 A Yes, that is correct.

15 Q Now, Mr. Flannagan, I'm going to direct
16 your attention to what Mr. Davis referred to as free-
17 standing, disposable racks, and maybe if we could get one of
18 the private employees to quickly assemble one while you
19 are testifying, I will ask you if this is in fact a picture of
20 one of the free-standing racks to which Mr. Davis referred
21 to in his opening statement?

22 A Yes.

23
24 MR. McVEY: Your Honor, can this be marked
25 as the next exhibit?

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1 THE COURT: It will be received and so
2 marked.

3 NOTE: At this point, the picture of the
4 free-standing, disposable rack is marked and filed
5 as Applicant's Exhibit No. 5.

6
7 BY MR. McVEY: (Continuing)

8 Q Mr. Flannagan, don't turn around, or you'll
9 hurt your back. If you will just look, we will get it moved
10 over here in a minute.

11 Mr. Flannagan, doesn't Miller Morton
12 use two of these free-standing racks?

13 A Yes.

14 Q And, I believe the picture which the
15 Court has before it, is the picture of the Maxi-Pole,
16 is that correct?

17 A Right.

18 Q And, the one your employee assembled
19 over here is called the Mini-Pole, but they are basically
20 used in the same way, is that right?

21 A The same way. It's the same concept,
22 just smaller.

23 Q By whom are these racks manufactured?

24 A These racks are manufactured out of Virginia,
25 in New York.

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1 Q As shown on Exhibit 5, and in the display
2 that is being set up here, with the brackets and the shelves
3 that are being attached to the rack itself, do the racks,
4 when it is sold, sell with the merchandise itself?

5 A Correct.

6 Q Is there any charge, separate charge,
7 made in respect to the rack?

8 A No.

9 Q When the purchaser orders, does he
10 order -- how would the purchaser place an order for this
11 particular Mini-Pole? The Court has before it, a copy of
12 the Maxi-Pole.

13 A He would order by number, which would
14 either be Mini or Maxi-Pole, and then the quantity. He
15 would probably only order one. I forget how many that has --
16 I think 48 collars. He is going to need a hundred and 44
17 collars then.

18 Q Is that designed to be refilled when the
19 supply of collars is exhausted?

20 A No.

21 Q Does he purchase the whole package as
22 such, which includes the rack, the collars, the shelves, and
23 the whole thing?

24 A That is correct.

25 Q Then, after the supply of collars is

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1 exhausted, the rack is to be disposed of?

2 A Yes.

3 Q Insofar as the bookkeeping of Miller
4 Morton is concerned, how do you charge for the cost of
5 the rack?

6 A The cost of the goods.

7 Q The cost of the goods sold?

8 A Right.

9 Q And, what is the purpose of this rack
10 insofar as Miller Morton is concerned?

11 A Well, it's designed to sell collars in
12 volume. It gives the retailer a way to sell more collars
13 himself. If he sells more, we are going to sell more.

14 Q All right. And, does it also save shelf
15 space for the retailer?

16 A Right. He doesn't have to use his shelf
17 space.

18 Q And, would it save labor?

19 A Yes, it's as easy to put that up as it is
20 to put cans on the shelves.

21 Q And, is the dog collar and pet care field
22 a competitive market?

23 A Absolutely.

24 Q And, is part of this to meet the competition?

25 A Yes. These displays are sold in January and

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1 February, when people are not thinking about buying flea
2 products, but that is when they are sold to get to the
3 market places before the competition.

4 Q All right. Now, if we could turn, Mr.
5 Flannagan, to what Mr. Davis has described as disposable
6 dual-purposes packages, and as long as we are dealing with
7 Sergeant's care products, maybe it would be helpful to
8 deal with the Sergeant's products.

9
10 THE COURT: What was the nomenclature of
11 that?

12 MR. McVEY: Disposable dual-purpose packages.

13 MR. FELTON: I can't say that we agree
14 with the characterization of the packages.

15 THE COURT: I understand. I'm just trying
16 to program myself to have the benefit of their nomen-
17 clature, and you can call it by an entirely different
18 name.

19 MR. FELTON: Absolutely.

20
21 BY MR. McVEY: (Continuing)

22 Q Now, Mr. Flannagan, I'm going to show you
23 what Mr. Davis has described as a disposable dual-purpose
24 package, and ask you to describe for His Honor what that
25 is, and how it works, and how it's sold.

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1 A We call that a shelf extension, and we get
2 this on the back here, and it permits the retailer to attach
3 that right on the end of a shelf, thereby not taking up his
4 shelf space, but giving him -- you got 12 collars here.
5 That customer can walk by and pick one off as he needs it.

6 Q Now, when this is marketed, is it marketed
7 as a complete package?

8 A That is correct. That is the stock number
9 here. That is the way it's billed to the customer. It's
10 billed at \$18.00 a dozen.

11 Q How does the price of that compare to
12 a dozen flea collars bought in bulk, but not including the
13 shelf extender?

14 A The same thing.

15 Q And, is this a package that is offered on
16 a regular basis by Miller Morton?

17 A Yes.

18 Q And, is there another similar type of
19 display?

20 A Yes.

21 Q I'm going to show you that, and ask you
22 whether that picture is a consumer type of device similar
23 to the one you have before you?

24 A Yes, this is free-standing. It's a counter
25 model. You would set it out on a counter, and these columns

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1 are packed just like that, and are put into corrugated cases,
2 and sold in that manner.

3 Q Just as the shelf extender is sold in a
4 separate case, and can be removed by the retailer and attached
5 to his shelf?

6 A Right. You can set this on the counter.

7 Q But, the principle is the same. Is this
8 a self-contained display and storage rack?

9 A That is correct.

10 Q Are either one of them designed to be
11 refilled?

12 A No.

13 Q And, the customer can purchase either in
14 bulk to fill his own rack, or he can purchase in this way,
15 is that correct?

16 A There is no reason for a customer to
17 buy one of these, and then buy two or three more dozen so
18 he can refill it, when he can buy three of these, and when
19 he is finished with this, he can unattach it from the shelf
20 and throw it away, and put the new one on the shelf.

21 Q And, the same thing would be true of the
22 counter display?

23 A That is correct.

24
25 MR. McVEY: If Your Honor please, could

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1 we have the counter display marked as the next
2 exhibit?

3 THE COURT: It will be P-6.

4
5 BY MR. McVEY: (Continuing)

6 Q Now, Mr. Flannagan, if in fact you were
7 shipping the dog collars without the shelf extender, or
8 without the counter display, thing, would you need some sort
9 of additional packages other than what we see before us?

10 A No, you just have it corrugated.

11 Q But, if you were marketing the collars in
12 a different way, would you package them differently? If
13 you marketing them without the shelf extender --

14 A Yes, we would put it in a shelf carton.

15 Q A shelf carton? What is a shelf carton?

16 A It's something like that.

17
18 MR. McVEY: Your Honor, we will defer
19 that until we get to the Chap Stick, so we can
20 keep the chronology.

21
22 Q So, if in fact the purchaser doesn't buy them
23 in this way, they would be bought in what you refer to as a
24 shelf carton, is that correct?

25 A That is correct.

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1 Q And, that would be designed to be inserted
2 on the retailer's shelf, is that correct?

3 A Right.

4 Q Where are the shelf extenders and the
5 counter displays manufactured?

6 A The shelf extenders are made in New York.

7 Q How about the collar displays that we just
8 introduced?

9 A I think they are made in New York too. They
10 are not from Virginia.

11 Q Are these also charged to the cost of
12 goods sold in the same way that the free-standing racks are?

13 A Right.

14 Q All right, sir. Now, if we could turn to
15 the Chap Stick products, and continuing with our disposable
16 dual-purpose packages, which Mr. Felton doesn't like, I'm
17 going to show you, Mr. Flannagan, a carton of Chap Stick
18 lip balm, and ask you if you would describe for me what that
19 is? What do you call that?

20 A We call this a self-serving pack.

21 Q Is that also a shelf pack?

22 A It is a shelf pack. In other words, this
23 is one design, and it would be packaged in a corrugated case,
24 probably six dozen to a case.

25 Q All right, sir. Now, is that designed--

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1 the white portion of it -- to be torn off so the man can
2 just put it on the shelf when he receives it?

3 A Well, it's designed to do that, and it's
4 designed to be taken and put on a peg hook if they want to
5 do that, but one of the primary reasons for that package is
6 to have a good way of transporting the merchandise as well
7 as having a display, too.

8 Q If the retailer decided to do that?

9 A Yes. But, you have to have something to
10 ship it in.

11 MR. McVEY: Your Honor, I'm going to ask
12 that this be marked as the next plaintiff's exhibit.

13 THE COURT: That will be received and
14 marked as Applicant's Exhibit No. 7.

15 MR. FELTON: Your Honor, may I have a
16 moment with opposing counsel?

17 THE COURT: Mr. Felton, suppose we take
18 about a ten-minute recess and give everybody a
19 chance to stretch their legs?

20 MR. McVEY: Your Honor, can we just ask
21 one more question before we go into recess?

22 THE COURT: Go ahead.

23
24 BY MR. McVEY: (Continuing)

25 Q Mr. Flannagan, you have described that

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1 as a shelf package, and described how it's used. That is
2 not in dispute, as I understand it. That is not subject to
3 the tax insofar as the State is concerned. Is that your
4 understanding?

5 A That is correct.

6
7 ;
8 MR. FELTON: We are going to object to
9 the whole admission of that. It's not in dispute,
10 and secondly, it has nothing to do with the case.

11 THE COURT: I understood that it was to
12 show its purpose. It was to show an alternative
13 device for the racks.

14 MR. FELTON: This is dog collars, and
15 that is Chap Stick.

16 MR. McVEY: We are going to get into
17 that, Your Honor.

18 THE COURT: But, you have a counterpart
19 that is used for the dog collars.

20 MR. McVEY: Right.

21 THE COURT: Do you have one with you?

22 MR. McVEY: Yes, and we are going to
23 use it with respect to the Chap Stick, Your Honor,
24 and one of our arguments is, as Mr. Davis advanced
25 in the beginning, that we contend that this is not,

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1 that these disposable racks are not separately
2 taxable, because they are part of the packages,
3 and to that extent, we want the Court to understand
4 that when we market them that way, they don't tax
5 us, and for the same reason, we feel the other
6 things should not be taxed.

7 MR. DAVIS: Your Honor, we have never
8 been able to get a clear-cut decision. Maybe it
9 has been clarified, but not in my mind as to whether
10 this is part of the assessment or not.

11 Now, I would be perfectly happy at this
12 time to have an admission that this type of dis-
13 posable rack is not assessed, and the State so
14 recognizes. If it's in dispute, I think we should
15 go ahead and introduce it into evidence.

16 MR. FELTON: Judge, I still don't like
17 their basis for introducing it. Mr. McVey says
18 one thing, and Mr. Davis says another.

19 THE COURT: This self-service Chap Stick
20 was introduced, and it's designed for shelf display
21 when it's torn in half.

22 MR. FELTON: It's not in the audit, and
23 it's not taxed in this case.

24 THE COURT: Does it follow from that,
25 that any counterpart from this used to market the

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1 dog collars is also not taxed?

2 MR. FELTON: I think that is a fair
3 inference.

4 THE COURT: But, their purposes of intro-
5 ducing it are to show that by way of analogy that
6 this carton serves no different purpose from what
7 P-5 and 6 do that are taxed, so I'll permit it for
8 that purpose.

9 Now, let's take a ten-minute recess.

10
11 NOTE: At this point, a ten-minute
12 recess has been taken, at the conclusion of which,
13 the Court states, viz:

14
15 THE COURT: Gentlemen, are you ready to
16 resume?

17 MR. FELTON: Yes, Your Honor.

18 MR. McVEY: Yes, sir.

19
20 BY MR. McVEY: (Continuing)

21 Q Before we recessed, we had introduced into
22 evidence an exhibit that you referred to as a shelf extender,
23 and the Commonwealth indicated that it was not a subject,
24 or not a product in dispute as to whether or not it was
25 taxable. I will show you now, sir, what is called a Chap

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1 Stick lip balm gravity display, that is packaged separately
2 in a box as shown here, correct?

3 A Right.

4 Q And, that is the way it is shipped to
5 the customer?

6 A Yes.

7
8 THE COURT: What is that Chap Stick
9 called?

10 MR. McVEY: It's called a lip balm
11 gravity display.

12 THE COURT: All right.

13
14 BY MR. McVEY: (Continuing)

15 Q Now, Mr. Flannagan, does Miller Morton
16 sell Chap Stick to its wholesalers in display cases similar
17 to this one, but in larger sizes?

18 A Yes.

19 Q How many sizes of that type of plastic
20 gravity display do you use in your marketing?

21 A In this type, we have three sizes, single,
22 double and triple.

23 Q All right. And, that is a double?

24 A This is a single gravity display.

25 Q All right. Do you have another source
of plastic dispenser?

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1 A Yes, we have a check stand display, and
2 the primary purpose of that is to display it at the cash
3 register.

4 Q Well, that basically is slightly smaller
5 than your gravity display, is that correct?

6 A Yes.

7 Q But, it works on the same principle, does
8 it not? When you pull one item out, the next one rolls down?

9 A Right.

10 Q And, you sell three types of the gravity
11 display, and that is, I take it, when you say a double, you
12 must have a device where similar ones sit on top of that?

13 A They are stacked up. You have a height
14 of about three of them.

15 Q And, I'm going to show you a flier, and
16 ask you whether this is a picture of the gravity display?

17 A It's a picture of this display right
18 here.

19 Q And, that is your single gravity display?

20 A Right.

21 Q And, the double and triple are simply
22 more?

23 A More Chap Stick, but the same concept.
24 They just have more tubes, you know. They have more plastic
25 and more tubes.

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1 Q And, your cash register display is just
2 a smaller version, really, of your gravity display?

3 A Right.

4 Q Is that correct?

5 A Right, the primary purpose is to display
6 that at the cash register.

7 Q And, by whom are these plastic dispensers
8 of all kinds manufactured?

9 A They are manufactured in New York by
10 Reliance Plastics.

11 Q Then, they are filled with Chap Stick
12 and distributed to your regional centers, and then subsequently
13 to wholesalers when the orders come into the regional centers,
14 right?

15 A Right.

16 Q Insofar as the packages are concerned,
17 Mr. Flannagan, what is the relative cost to Miller Morton
18 of the packaging of Chap Stick in a plastic container as
19 opposed to the cardboard shelf dispenser, which we have
20 previously introduced into evidence?

21 A I can tell you on a per unit basis.

22 Q Well, are you referring to the individual
23 tube of Chap Stick?

24 A Well, that is much more costly on a per
25 unit basis than any of these other displays.

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1 Q When you say that for the purposes of
2 the record--

3
4 THE COURT: He is talking about P-7.

5
6 BY MR. McVEY: (Continuing)

7 Q The shelf units are more expensive per
8 unit than the various plastic dispensers, which are the
9 subject of dispute here, is that correct?

10 A That is correct.

11
12 THE COURT: Do you want that picture to
13 come into evidence?

14 MR. McVEY: Yes, sir.

15 THE COURT: That will be marked at P-8.

16
17 BY MR. McVEY: (Continuing)

18 Q Now, the plastic dispensers are designed
19 to be used in the retail establishments, is that correct?

20 A Right.

21 Q For the dispensing of Chap Stick?

22 A Correct.

23 Q Mr. Flannagan, what appeal do the plastic
24 dispensers have to a retailer?

25 A Well, it's a better looking merchandising

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1 tool for the retailer, than say a cardboard dispenser.
2 Plastic is just the thing that is in today. It's the type
3 of merchandising that the retailer wants.

4 Q And, those are used in the retail establish-
5 ment, is that correct?

6 A Right.

7 Q Are they designed to be refilled?

8 A No.

9 Q And, insofar as the retailer is con-
10 cerned, he would then -- once it's dispensed, all the Chap
11 Stick in it would be thrown away, and he would break out
12 another one, is that correct?

13 A Yes, it can be refilled, but that is not
14 primarily the purpose of it.

15 Q And, to refill it, would involve labor on
16 the part of the retailer, is that correct?

17 A Yes. Now, some of these displays, when
18 they are sold, will have loose tubes along with them. As
19 you know, it's just a deal. It seems to me that this one
20 should have some in it. This is the package it came in. I
21 think it was opened this morning. Well, occasionally, there
22 is a small quantity of loose tubes just for a better deal,
23 but primarily, these displays are not sold to be refilled.

24 Q Are they cheaper than the other displays
25 which we have introduced?

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1 A Yes.

2 Q Now, if we could turn, Mr. Flannagan, to
3 the pet care book, I am going to show you what purports to
4 be a pet care book, and ask you whether that is an item
5 in dispute?

6 A I believe it's an item in dispute, yes.

7 Q All right, sir.

8 A That is a pet care book, that is made
9 available by Miller Morton, and it's made available in
10 much the same manner that we make products available.

11 Q Insofar as the pet care books are con-
12 cerned, Mr. Davis said in his opening statement, except
13 for a few of those books, which were printed in Richmond
14 in 1971, the rest were printed out of the State of Virginia,
15 is that correct?

16 A That is correct.

17 Q And, are those then shipped by the
18 manufacturer to your central warehouse here in Richmond?

19 A Yes.

20 Q And then, from that point on, how are
21 they used? What use was made of them during the period in
22 question?

23 A We would certainly distribute them in
24 quantity to the three regional warehouses for their use.

25 Q Would that be done after a particular

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1 request from a warehouse, or would you make a determination--

2 A No, the regional warehouse would request them
3 just as they would request additional inventory. Now, the
4 dog book requests came from customers, and the salesmen, when
5 taking orders, would offer the customers the dog book. They
6 were offered the dog book if they would use it, so it came in
7 just like a customer order. It was handled much like a pro-
8 duct, but there was no charge for it. There was no charge
9 to the customer.

10 Q Well, the decision as to what customer
11 this was to go to and in what volume, was made where, Mr.
12 Flannagan?

13 A I would say it was mainly made by the sales-
14 man.

15 Q All right. And, he would then put in a
16 request to the regional distribution center to ask that so
17 many be shipped to that particular customer, is that correct?

18 A Correct.

19 Q As far as Richmond is concerned, you would
20 simply ship a volume of them to the regional center, and
21 withdraw them as needed by the salesmen in that particular
22 area, is that correct?

23 A Yes.

24
25 MR. McVEY: I would ask that this be marked

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1 as the next plaintiff's exhibit.

2 THE COURT: This will be P-9. This
3 will be received and marked as P-9.

4
5 BY MR. McVEY: (Continuing)

6 Q Insofar as those dog booklets are con-
7 cerned, does Miller Morton from time to time get requests
8 from individuals for copies of those?

9 A Right.

10 Q And, those would be sent by mail to the
11 individual, wherever he might be, whether it was in Virginia
12 or somewhere else?

13 A Right.

14 Q Insofar as all of the products which we
15 have discussed here today are concerned, and which are in
16 dispute, does the Richmond warehouse act as the regional ware-
17 house for the other areas shown on the map that has been intro-
18 duced?

19 A That is correct.

20 Q And, to that extent, district managers and
21 salespersons would request the Richmond regional warehouse
22 for the various items, either as samples or orders for vari-
23 ous customers, or as pet centers for merchandisers in whatever
24 state the salesmen worked within the regions, is that correct?

25 A Right.

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1 Q And, that covers most of the Eastern
2 Seaboard, does it not?

3 A Right.

4 Q So, it's to the extent that the salesmen
5 who work out of the State of Virginia would work in the same
6 way as the salesmen would work in other regions, making their
7 requests to the regional center, and it would be handled in
8 the same way that the salesmen in Nebraska or Los Angeles
9 would handle it, is that correct?

10 A Right.

11
12 MR. McVEY: Your Honor, I think that
13 concludes my examination.

14 THE COURT: Is there any cross-examination,
15 Mr. Felton?

16 MR. FELTON: I just have a few questions,
17 if Your Honor please.

18 CROSS-EXAMINATION

19 BY MR. FELTON:

20 Q Mr. Flannagan, we have got a right large
21 variety of items here, and I know it's a little difficult to
22 generalize, but is it not true that all of these items that
23 we are talking about are stored in Virginia in the warehouse
24 before they are shipped to the regional warehouses in Illinois,
25

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1 Texas and California, and retained in Richmond for regional
2 distribution? Isn't that correct?

3 A That is generally true.

4 Q So, as to each of the items in the audit
5 that we are talking about today, these items were physically
6 located in Richmond in the warehouse at one time prior to
7 distribution, weren't they, sir?

8 A Yes.

9 Q Now, at the time that they were physically
10 located in Richmond, they were owned by Miller Morton, were
11 they not?

12 A Right.

13 Q Miller Morton had the right to sell them
14 at that point, or to distribute them free of charge to what-
15 ever extent they wanted to, isn't that right?

16 A Right.

17 Q And, at the time they were located in
18 Richmond, no sales tax had been paid on them, had there, sir?

19 A No.

20 Q Not to any jurisdiction?

21 A I don't believe so.

22 Q All right, sir. No use tax had been paid
23 on them to any other jurisdiction at the time they were
24 brought into Virginia and placed in the warehouse, had it?

25 A No.

1 Q Now, at the time that the sample items
2 were brought in here and placed in the warehouse, you knew
3 at that point, didn't you, sir, that a certain percentage
4 of them might vary between one-tenth of a percent and a half
5 of a percent, but you knew at the time these items were here
6 in the warehouse, didn't you, that some percentage of them
7 in that range would be used for free distribution as samples?

8 A We used them for samples, yes.

9 Q And, you knew from prior experience that
10 the percentage of samples distributed would be somewhere
11 between that tenth of a percent and half of a percent figure
12 that you testified as the range of free distribution during
13 the audit?

14 A That might be true.

15 Q Well, the figures were available on your
16 books in Richmond to establish that at any time in which
17 these items were located in Richmond, weren't they, sir?

18 A From 1968 on. Prior to that, we had no
19 way to determine what were samples.

20 Q And, of course, Richmond, being the
21 executive office, maintained overall administrative control
22 over the entire operation, didn't it?

23 A That is correct.

24 Q And, the administrative offices in
25 Richmond would have the authority to control large requests

W.L. Flannagan - Cross

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1 from other branches in regard to sample distribution, wouldn't
2 they?

3 A They would have that control if they were
4 aware of it, yes.

5 Q I don't mean to be facetious, but if some-
6 one requested 25 percent of your inventory to be used as
7 free samples, Richmond would step in and control that, wouldn't
8 they?

9 A If they were aware of it.

10 Q Now, let me talk with you just a minute
11 about the pet center racks, which are the large racks. There
12 is no charge in the way of a specific tax charge to the
13 wholesaler or merchandiser for that rack, is there, sir?

14 A There is no dollar charge, but there is
15 consideration for the use of the rack.

16 Q Well, the purpose of that rack, Mr.
17 Flannagan, is really to assist in the merchandiser's promotion
18 and sale of the dog care products, isn't that correct?

19 A That is true.

20 Q And, what you are trying to do with all
21 of these display items is to make it easier or more attractive
22 to the ultimate consumer to reach up and pick up the pet
23 care and Chap Stick products, which you are really in the
24 business of selling, correct?

25 A Are we talking about Chap Stick or the

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1 dog care products?

2 Q Well, in either case.

3 A Well, in the case of the racks, it is a
4 competitive situation.

5 Q But, what you are trying to do is make
6 it easier for most of those pet care products to get in the
7 hands of the ultimate consumer with that rack, aren't you,
8 sir?

9 A We try to give our merchandisers a vehicle
10 by which he can obtain better sales, yes.

11 Q And, that is not different from the way
12 I phrased it, is it?

13

14 MR. McVEY: He answered the question in
15 a way that he saw fit, and I don't think Mr.
16 Felton can go back and ask him whether it's the
17 same or not. I think the Court can interpret the
18 evidence.

19 THE COURT: It's not for me to determine,
20 Mr. Felton.

21 MR. FELTON: I think I have the latitude.

22 THE COURT: If you are arguing with him,
23 you know that this is impermissible.

24 MR. FELTON: All I'm trying to do is make
25 sure that what he says is not different from what

W.L. Flannagan - Cross

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1 I'm trying to say. That is, that he is trying to
2 promote the product.

3 THE COURT: If you have gotten a favorable
4 answer, why are you unhappy?

5 MR. FELTON: I want to make sure it is
6 favorable, so there will be no problem.

7 MR. McVEY: I note my objection, but I
8 don't know whether the Court has ruled on it or
9 not.

10

11 BY MR. FELTON: (Continuing)

12 Q Is that true?

13 A Are you talking about the pet racks right
14 here?

15 Q Yes.

16 A It is a vehicle which permits our merchan-
17 disers to obtain higher sales because of its convenience.

18 Q And, you are engaged -- when I say you,
19 I mean Miller Morton, and you, of course are speaking as its
20 corporate officer. Miller Morton is engaged in the business
21 of selling the pet care products, and not the racks, aren't
22 they, sir?

23 A That is correct.

24 Q Okay. And, all of the sales analyses
25 that you have testified to, and about the competitive

W.L. Flannagan - Cross

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1 situation, and agreeing to pay the merchandisers for the
2 competitor's products -- the purpose of all that is not to
3 sell the racks, but it's to sell the products on the racks,
4 isn't it?

5 A Correct.

6 Q You and Mr. McVey talked briefly about
7 the free-standing disposable racks. It's true, is it not,
8 Mr. Flannagan, that with these racks, you have package deals
9 that result in the fact that you can sell a number of collars
10 with the rack for less than you would sell just the number
11 of collars, isn't that correct?

12 A A customer can buy more favorably, collars
13 with a rack than he can buy them without the rack.

14 Q For example, and I don't know what the
15 numbers are--

16 A If I may interject, when he does that,
17 he is buying in volume, and not buying one dozen.

18 Q I understand, but I don't know what the
19 numbers are, but for example, if you were to want to buy
20 a hundred or 144 or whatever the number is, of the pet
21 collars, I could buy them less expensively with a rack other
22 than just buying the collars in a given situation, is that
23 correct?

24 A That is correct.

25 Q And, again, your purpose for those racks

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1 is for selling the collars, and not the racks themselves,
2 isn't that correct?

3 A It provides the merchandiser or the retailer
4 a vehicle in which he can conveniently sell the collars.

5 Q And, of course, the collar that you want
6 him to sell is the Sergeant's collar, and not the competitive
7 brand, right?

8 A Absolutely.

9 Q And, that is why you have the Sergeant's
10 name with the special \$1.00 free value ads on top of some
11 of the racks, and things like that, isn't it?

12 A Right.

13 Q Aren't you trying to direct the consumer's
14 attention to your rack, your product, and get him to reach
15 in and get your product?

16 A Naturally.

17 Q None of the display racks we are talking
18 about are resold to consumers, or to customers, that come
19 into the store under any circumstances, are they, Mr. Flannagan?

20 A No. When I say no, I mean that we don't
21 have any control over what Safeway Stores might do or any
22 other store.

23 Q I understand. And, you never intended that
24 they be sold, and to your knowledge, it's never happened?

25 A Right.

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1 Q We talked just briefly about this Chap
2 Stick lip balm, and the shelf packs. When this dispenser,
3 called the lip balm gravity display, is shipped to Miller
4 Morton from the wholesaler, it is packed in a shipping carton,
5 is it not?

6 A Yes, it's a corrugated shipping carton.

7
8 MR. FELTON: Could I have one of those
9 boxes?

10 If Your Honor please, I don't want to
11 clutter up the record, but I want to make the point
12 that what we are dealing with is not the package
13 itself, and this will be introduced into the record
14 at this point, but the box that contains that item,
15 and I would ask Mr. Flannagan if he would identify
16 this item as the package in which the lip balm
17 gravity display is delivered to the purchaser.

18 MR. FLANNAGAN: Let's have the gravity
19 display up here.

20 THE COURT: It's the small unit.

21 MR. FLANNAGAN: This is the gravity display
22 box.

23 MR. FELTON: I didn't think it was this
24 big. I was trying, for the record, not to make it --

25 THE COURT: But, that small cash register

W.L. Flannagan - Cross

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1 item operates on the same principle as your lip
2 balm gravity display, doesn't it?

3 MR. FLANNAGAN: Well, this would not be
4 shipped like that. It would be in a bigger corrugated
5 container.

6 THE COURT: I see several units. Are all
7 three sizes of your lip balm gravity displays unitized
8 in one carton, or do you have multiple cartons?

9 MR. FLANNAGAN: Well, they would go into
10 one. Each one would be a shipping case.

11 THE COURT: In its separate container?

12 MR. FLANNAGAN: That is correct.

13 MR. FELTON: If Your Honor please, I would
14 like to introduce that as Defendant's Exhibit A or 1.

15 THE COURT: That will be received and
16 marked as Defendant's Exhibit No. 1.

17
18 BY MR. FELTON: (Continuing)

19 Q Now, Mr. Flannagan, again, the purpose of
20 the Chap Stick, just like the dog care products, is to get
21 the product as conveniently as possible in the hands of the
22 consumer, is it not?

23 A Rephrase that question.

24 Q The purpose for supplying a gravity feed
25 rack of any size is to put that Chap Stick where it's most

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1 convenient and most attractive to the ultimate shopper, who
2 walks through and goes to the cash register with it, isn't
3 that true?

4 A It's to give our customers a convenient
5 way to sell the Chap Stick.

6 Q And, you are engaged in the business,
7 as in the dog care area, of selling the ultimate product, the
8 Chap Stick, rather than the display racks, isn't that correct?

9 A That is correct.

10 Q All right, sir. No extra charge is given
11 to any of your customers for the dispenser, is there?

12 A None at all.

13 Q How about the dog booklets? I think you
14 already testified that you don't make any charges to your
15 customers, or to people who write in asking for the dog
16 booklets, isn't that correct?

17 A No, we don't.

18 Q Okay. When someone writes in and asks
19 for a copy, whether they are a consumer or customer of
20 yours, and if mailed, is it mailed from Richmond?

21 A It is mailed from Richmond.

22 Q And, the purpose again?

23 A Is that an individual now?

24 Q As to the ones that are distributed to
25 the ultimate retailer in the ordinary course of business through

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1 the regional warehouses. These items, prior to distribution
2 to their regional warehouses, were located in Richmond, were
3 they not?

4 A The dog booklets?

5 Q Yes, sir.

6 A Yes.

7 Q And, the purpose of the dog booklets is
8 a goodwill purpose, is it not?

9 A Yes.

10 Q And, again, you are not engaged in the
11 business of selling dog books, but hoping they will aid in
12 the selling of the merchandise you are in the business of
13 moving, isn't that correct?

14 A No, we were not in the business of selling
15 dog booklets at that time.

16 Q During the period of that audit, you
17 didn't sell any of the dog books, did you?

18 A No, we didn't.

19 Q I would like to show you a document entitled
20 Commonwealth of Virginia, Corporation Income Tax Return, for
21 the year 1971, and ask you if you can identify it, Mr.
22 Flannagan?

23
24 THE COURT: Is there any dispute about
25 it, gentlemen? Have you seen it?

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1 MR. DAVIS: We have seen it.

2 THE COURT: Just lead him through it.

3 Is that the Robins' State Income Tax Return?

4 MR. FELTON: This is Miller Morton's State
5 Income Tax Return for 1971.

6 THE COURT: All right.

7

8 BY MR. FELTON: (Continuing),

9 Q This is Miller Morton's State Income
10 Tax Return for 1971, is it not?

11 A Yes.

12 Q And, it involves the financial adjustments
13 made by the State Department of Taxation for the year 1971,
14 which is one of the years involved in this case on the
15 sales tax issue, isn't it, sir?

16 A Yes.

17 Q Now, on that income tax return, and I
18 direct your attention, Mr. Flannagan, to Schedules 7 and 8,
19 and I think they are on Pages 6 and 7, and in reference to
20 the samples you used for promotional supplies, would you
21 tell the Court what schedule of expenses they are listed
22 under?

23 A They are listed as advertising expenses,
24 but that doesn't bother me in the least, because our audi-
25 tors prepared that schedule, and we don't carry samples on

W.L. Flannagan - Cross

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1 our books, and we can prove this as advertising expense.

2 Q But, the point is, that for purposes of the
3 Virginia Income Tax Return for 1971, one of the years you are
4 involved in, these items, these promotional items, were
5 listed under advertising expense, weren't they?

6
7 MR. McVEY: I would like to object. I'm
8 not satisfied that how they were treated for pur-
9 poses of income tax has any relevancy insofar as
10 whether they are or are not items which are subject
11 to a sales or use tax in Virginia.

12 THE COURT: How is that probative of this
13 issue, Mr. Felton?

14 MR. FELTON: Judge, it's something the
15 Court can give weight to. I don't mean to tell you
16 it's controlling, but when I say they come before
17 the Department of Taxation, and treat these as
18 advertising where it's favorable--

19 THE COURT: And, take it as a deduction?

20 MR. FELTON: Then, that conflict should
21 be considered by the Court.

22 MR. McVEY: I disagree, because whether
23 it's the cost of the goods sold, or whether it's
24 an advertising expense, it's still a legitimate
25 deduction for income tax purposes in determining

W.L. Flannagan - Cross

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1 the amount of income, and we are talking about
2 apples and oranges, and it doesn't have any
3 relevancy.

4 THE COURT: I understand. Whether you
5 classify it as the cost of the goods sold, or as
6 an advertising expense, it's only taken once, is
7 that correct?

8 MR. McVEY: Correct.

9 MR. FELTON: I would like to offer that.

10 THE COURT: That will be received and
11 marked as Defendant's Exhibit No. 2.

12 MR. McVEY: We would object for the
13 reasons stated.

14 THE COURT: All right.

15
16 BY MR. FELTON: (Continuing)

17 Q Mr. Flannagan, do you know, for purpose
18 of allocation and apportionment, under the Virginia Income
19 Tax Statute, whether for the year 1971, exempt items were
20 all attributed to Virginia for purposes of computation of
21 the Virginia Income Tax?

22
23 MR. McVEY: If Your Honor please, we
24 object to this for the same reasons, and whether
25 they were or were not charged to Virginia for the

1 purposes of income tax is an income tax problem
2 between Virginia and the other states involved in
3 taxing Miller Morton, and not a question of whether
4 these items are subject to sales and use taxes.

5 MR. FELTON: Judge, for the same reasons, I
6 think it's appropriate for the Court to consider the
7 matter.

8 THE COURT: Overruled. Proceed.

9 MR. McVEY: Please note my exception to
10 your objection, Your Honor.

11 THE COURT: All right.

12
13 BY MR. FELTON: (Continuing)

14 Q It's true, is it not, that in the year
15 1971, that for the purposes of your corporation income tax
16 for that year, and the return filed by Miller Morton for
17 1971, that part of the apportionable income attributable
18 to Virginia, Miller Morton attributed all its samples to
19 Virginia for their Virginia income tax purposes?

20 A I don't think that is true, but you have
21 had the benefit of looking over that return, and I haven't.
22 Our taxes were always figured, and we pay income tax in
23 California, Illinois and Virginia, and I assume they were
24 apportioned accordingly.

25 Q You don't have any knowledge of what was

W.L. Flannagan - Cross

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1 actually done?

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THE COURT: Mr. Davis, do you know, just to
simplify things?

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MR. DAVIS: I would strenuously object
to this, because apportionment involves three things.
Apportionment involves sales, sales on property in
this state, and on payroll in this state, none of
which would be relevant to the question. Once you
get that figure, that fractional figure, you apply
that to the net income to determine how the tax
will be paid to the State of Virginia and to the
other states. So, there is no relevancy whatsoever,
and the two are completely different statutes, and
there is no assigning of the samples to one state
or to the other state. It's done simply on that
fractional basis of sales, payroll, and property,
and nothing else.

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THE COURT: I understand, but Mr. Felton
thought it was a matter of significance. I would
rather end the subject with the objection, and if
he can't persuade you, Mr. Davis, that it's rele-
vant, it wouldn't have any probative value.

24

25

MR. DAVIS: I just thought the Judge would
want to know.

W.L. Flannagan - Cross

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1 THE COURT: I understand, and I follow
2 your point on it.

3 MR. FELTON: Okay. That concludes our
4 examination.

5 THE COURT: Is there anything further?

6 MR. McVEY: I have just one further question,
7 Your Honor.

8
9 REDIRECT EXAMINATION

10 BY MR. McVEY:

11 Q In the case of the shelf-dispenser marked
12 Plaintiff's Exhibit No. 7, which is in a red and white box,
13 is that shipped to your warehouse and distributed in that
14 box, or is that also in a corrugated container?

15 A That would be in a corrugated container.

16
17 THE COURT: Several of them are shipped
18 in corrugated containers.

19 MR. McVEY: Just the same way that several
20 of the check counter displays are packed.

21
22 Q They also have outside corrugated containers,
23 is that correct?

24 A Right.

25 Q And, in the same way that a lip balm gravity

1 dispenser is packed in corrugated containers, right?

2 A Right. Your Honor, about 12 or 18 tubes
3 are in this container. We have to have some vehicle in
4 which to use these items. You can't just pour them in a
5 cardboard box. That is why, even though it's plastic, it
6 is a container, which is used for shipping.

7
8 MR. McVEY: Your Honor, I don't think
9 we have any further questions.

10 MR. FELTON: There are no further questions
11 from the Commonwealth.

12 THE COURT: On items such as P-3, when
13 that is used here in Virginia, does Robins pay a use
14 tax on it without complaining?

15 MR. DAVIS: Those are used in Virginia
16 and shipped from Virginia.

17 THE COURT: I thought they were, but then
18 the items that are sold off of that here in Virginia
19 then, are subject to sales tax, and you don't
20 challenge that?

21 MR. DAVIS: Yes, it's only that rack in
22 California and what happens after it gets in
23 California, and they are sold. The State doesn't
24 tax us for the sale, so I don't know why they tax
25 us for the rack.

W.L. Flannagan - Redirect

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1 THE COURT: Assuming that they are sold
2 in California, they would be subject to California
3 sales tax. It's a counterpoint.

4 Mr. Flannagan, you may stand down.
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WITNESS STOOD ASIDE

MR. McVEY: Your Honor, that is the
plaintiff's case. We don't expect to put on any
more evidence.

THE COURT: All right. Mr. Felton, you
may proceed.

MR. FELTON: The first witness for the
Commonwealth would be Mr. Frank Lewis.

THE COURT: Come forward, Mr. Lewis.

1
2 FRANK W. LEWIS, a witness called by the
3 Commonwealth, having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. FELTON:

6 Q State your full name, please?

7 A Frank W. Lewis.

8 Q Where are you employed?

9 A Department of Taxation with the State of
10 Virginia.

11 Q And, in what capacity are you employed
12 with the Department?

13 A As Director of the Sales and Use Tax
14 Division.

15 Q Is the implementation of the sales tax
16 policy and the use tax policy directly under your control?

17 A Yes, it is.

18 Q All right, sir. First of all, will you
19 tell the Court how long the Sales Tax Act has been on the books?

20 A It was enacted in March of '66, and became
21 effective September 1, 1966.

22 Q And, it is the responsibility of the
23 Director to implement and administrate the sales tax and
24 use tax?

25 A Yes, it is.

F. Lewis - Direct

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1 Q Has the Department so been since 1966,
2 when the sales and use tax were implemented?

3 A Yes.

4 Q Will you tell the Court, please, whether
5 over the period from 1966 through 1971, the period covered
6 by this audit, the Department had an administrative policy
7 with relation to the use taxation of samples and racks and
8 pamphlets, such as the ones that have been testified to by
9 Mr. Flannagan in this case today?

10 A Yes.

11 Q Will you explain to the Court, please,
12 what the departmental policy is in connection with the taxa-
13 tion of samples in the enumerated circumstances?

14
15 MR. McVEY: I understand that the adminis-
16 trative policy may be of some relevance, but this
17 is a statute, and we rely on the wording of the
18 statute, and the fact that the State may have adopted
19 it, still could be wrong.

20 THE COURT: He might bootstrap his own
21 operation in changing the statute.

22 MR. FELTON: That is one of the things we
23 can all agree on, Judge.

24
25 Q Describe for the Court, please, what the

F. Lewis - Direct

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1 departmental interpretation has been in the area of samples,
2 as the ones involved in this case?

3 A The law allows for the Tax Commissioner
4 to promulgate rules and regulations not inconsistent with
5 the chapter, which the Commissioner did at the time, and under
6 these rules, which are an attempt to elaborate on the law, and
7 make it easier for people to understand, under Section 1-3,
8 page 8, there is put into writing, that if related to
9 premiums and gifts, and then the tax applies to purchases of
10 tangible personal property to be given away through the
11 advertising of their business, or products, or given away as
12 premiums, door prizes, or given away for any other reason. So,
13 quite simply, the departmental policy has been, any time items
14 are given away for promotional purposes, that these items
15 are not being sold, and therefore, the tax applies based on
16 1-3, paragraph D of the Virginia Retail Sales and Use Tax
17 Rules and Regulations.

18 Q Will you tell the Court, please, whether
19 that applies to all of the items that are involved in this
20 case?

21 A Yes, it does.

22 Q All right, sir.

23
24 THE COURT: Gentlemen, I'm marking your
25 Rules and Regulations as Defendant's Exhibit No. 3 in

F. Lewis - Direct

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1 case I make reference to it, so you will know
2 what I am referring to. Take a copy of it,
3 Mr. McVey, for your own records.
4

5 BY MR. FELTON: (Continuing)

6 Q Mr. Lewis, will you tell the Court what
7 the departmental interpretation of the use tax statute is, in
8 the area of first use as it applies to items warehoused in
9 Virginia?

10 A The definition of use, which is under
11 58-441.3, paragraph H, which has been previously mentioned in
12 this court, is broadly defined as any right or power incident
13 to the exercise of tangible personal property, but under
14 that definition of the law, it states that it doesn't include
15 a sale at retail to them. In other words, any sale at
16 retail is not defined under use, but any exercise of the
17 rights of power over their property incident to the ownership
18 thereof is defined as use, and the department's position is
19 when a person making the decision elects to pay taxes exempt
20 from resale, then makes another use at retail, which is the
21 decision to give away rather than to sell or to use for
22 promotional purposes, rather than to sell, then that is
23 clearly a taxable use based on the definition.
24

25 THE COURT: But, on the display racks

F. Lewis - Direct

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1 behind you, the cost on that is unitized in the
2 product, isn't it?

3 MR. LEWIS: Yes, I'm sure it is.

4 THE COURT: So, when they sell it to
5 Texas from here in Richmond, it goes out at one
6 price, and then the purchaser advertises his invest-
7 ment at the price he gets for each unit on there,
8 doesn't he?

9 MR. LEWIS: It's just one transaction.
10 Let's say the retailer ultimately paid \$100.00 for
11 it.

12 THE COURT: But, the cost of the whole
13 thing is one price, and then each item has a cost
14 figured into it that reflects the whole display kit,
15 doesn't it?

16 MR. LEWIS: These kinds of questions can
17 best be answered by the people in the business.

18 MR. McVEY: That is true insofar as the
19 disposable Mini and Maxi-Poles are concerned.

20 THE COURT: But, I'm talking about the
21 Mini and Maxi.

22 MR. McVEY: All right, sir.

23
24 BY MR. FELTON: (Continuing)

25 Q Mr. Lewis, can you tell the Court whether

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1 the Department interprets, as the Court has recently inquired,
2 as being retail, those items by the taxpayer?

3 A No, it doesn't.

4 Q And, will you tell the Court briefly why,
5 sir?

6 A Well, we feel that all purchases made by
7 anyone in the business of selling are included in the final
8 cost of their product, whether it be a typewriter for the
9 secretary in the office, or salaries. All expenses end up
10 in the final selling price of the product. Obviously, no
11 one would argue that Miller Morton is selling their secre-
12 taries' typewriters when they sell their products, even
13 though the cost of that is included in the final selling
14 price, and the Department feels these racks come into the
15 same category. There is no specific charge made by them.
16 They are used for the purposes of Miller Morton for promo-
17 tional purposes. We don't feel they are selling racks. There
18 is no separate charge made for them. We feel it's just another
19 purchase by them for their own use, and in order for them to
20 do business in the selling of their products.

21 Q Mr. Lewis, are there any code provisions
22 that the Department administratively interprets to prevent
23 double taxation in the event of imposition of use tax upon
24 a first use of tangible personal property in Virginia?

25 A Sales tax has been previously mentioned as

F. Lewis - Direct

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1 opposed to 58-441, and use under 58-441.3. There is no
2 duplication of the tax. In other words, they are complimen-
3 tary taxes. The whole purpose of the use tax is if the sales
4 tax isn't paid at the time it was supposed to be, use tax
5 picks up, so they are complimentary taxes, but they should
6 never be duplicated. Most states have credit provisions to
7 avoid double taxation. In other words, in the instance of
8 California, if Miller Morton paid taxes on this rack here in
9 Virginia, and then shipped it out to California, and used it
10 out there, California can't be checked and say, we want you
11 to pay tax for this rack. They would say, we paid that
12 tax to Virginia, and I know for a fact that the State of
13 California has a credit provision which allows Miller Morton
14 credit for taxes paid on this particular item up to and equal
15 to the amount of the California tax.

16 Q Mr. Lewis, have you listened to the testi-
17 mony offered by the applicant this morning?

18 A Yes.

19 Q And, have you listened to it with a view
20 towards relating it to departmental policies in the area of
21 taxation in these matters?

22 A Yes.

23 Q Will you tell the Court whether the appli-
24 cation of the tax on this taxpayer on the facts as provided,
25 accurately reflect departmental policy?

F. Lewis - Direct

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1 A It's my opinion that the Department has
2 always taken that position as it relates to advertising, and
3 promotional type of items, of a manufacturer.

4
5 MR. FELTON: That is all the questions
6 I have, if Your Honor please.

7 THE COURT: Is there any cross examination?

8 MR. DAVIS: Yes, Your Honor.

9
10 CROSS-EXAMINATION

11 BY MR. DAVIS:

12 Q Now, Mr. Felton has spent a great deal
13 of time, and in his beginning, in attempting to say a taxable
14 use is derived from two items, he has referred over and over
15 again -- he has asked the question of Mr. Lewis and Mr.
16 Lewis agreed when they were talking about taking title to
17 property, and then Mr. Felton has expressed, as he did with
18 Mr. Lewis, secondly, storage, taking title to property and
19 storage.

20 Mr. Lewis, if I'm a manufacturer and I
21 purchase materials, use those materials in my manufacturing
22 operation, and manufacture a product for resale and storage,
23 is the storage of that product a taxable use?

24 A It would depend on whether there was a
25 specific exemption for that item.

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F. Lewis - Cross

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1 Q Assume there is an exemption. You know
2 the answer very clearly from this, or should I read this?

3 A No, I mean, you have two routes to take.
4 You have components and items used directly for resale.
5 If the item is not used directly--

6 Q I only asked you one question. I have
7 taken title to the materials, I have manufactured those
8 materials for resale, I have stored them, waiting for a resale.
9 At that point, has the ownership or has the storage of that
10 property been a taxable use?

11 A No, because it's being held for sale.

12 Q No taxable use?

13 A That's right.

14 Q Now, in looking at your Code, and in a
15 section we have not dealt with, I might just preface it.
16 Instead of manufacturing, suppose that I purchased goods,
17 took title to the goods, and I was going to hold those goods
18 as a wholesaler for resale. Is it taking of title? Is the
19 storage of those goods a taxable use?

20 A Not if it's being held for resale.

21 Q So, we can have a non-taxable use when we
22 acquire title and when we store items. Your answer obviously
23 indicates that you admit that we can have a non-taxable use.

24 A The definition of use doesn't include sales
25 for resale, and so you are correct.

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F. Lewis - Cross

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1 Q I refer you to Section 58-441.17C. If
2 a purchaser of lessee makes any use of property other than
3 an exempt use, then he is taxable. Are you familiar with
4 that section?

5 A Yes, I am.

6 Q Now, it means that there can be an exempt
7 use of property after there has been title and storage, would
8 you agree?

9 A I believe it was for an exempt use for
10 retention, demonstration, or display.

11 Q If it's other than for that? Well, if a
12 purchaser or a lessee, under this section, makes any use of the
13 property other than an exempted use, or retention, demonstra-
14 tion, or display, while holding property for resale, distri-
15 bution, or lease, in the regular course of business, such use
16 shall be deemed taxable. Now, that is any use other than an
17 exempt use.

18 A Of retention, demonstration, or display,
19 while holding the property for resale, distribution, or lease
20 in the regular course of business.

21 Q Now, you have heard the testimony that
22 came in the record that all of the inventory items of Robins
23 are manufactured or purchased for resale, and that in the
24 course of time, and in some other states, outside the central
25 warehouse, there are gifts or transfers of property, and
samples are transferred outside. -97A-

1 Now, you have heard this testimony. Now,
2 those goods were purchased and taken out of regular stock.
3 What I'm interested in knowing is, what caused us to lose the
4 exemption use? Why aren't we under an exemption use, and I
5 refer you to Section 58-441.6R. I have a hard time finding
6 these sections. That says, delivery of tangible personal
7 property outside this state for use or consumption outside
8 this state. Now, where you have admitted I can have a tax-
9 free non-taxable use purchase, I can have it stored, and this
10 section goes on to say that you shall not include delivery
11 outside the State of Virginia. What was the incident that
12 caused us to go from a non-taxable transaction to take me out
13 of my exempt use that the General Assembly put me in, under
14 58-441.6R that exempted my delivery? What broke the chain?
15 What caused us to be taxable?

16 A Well, I believe the chain was broken by
17 the decision and obvious intent to give away the property
18 as opposed to holding it for retention, demonstration or dis-
19 play in the regular course of business for sale. Then, as
20 far as the delivery to persons outside of Virginia is con-
21 cerned, I believe that those deliveries have to be sold. Not
22 just anyone can make a delivery out of the state, and Section
23 1-50 clarifies the administrative wording of that.

24 Q I think we are getting right to the crux
25 of the regulations that have been referred to, because Mr. Lewis

1 says that Section 58-441.6R, which I think is completely
2 unambiguous, is what he wants the Court and the taxpayers
3 of the State of Virginia to read as delivery of tangible
4 personal property for resale outside this state, and for use
5 and consumption, and Judge, that is where they go wrong.
6

7 MR. FELTON: May I interject?

8 This should be cross-examination.

9 THE COURT: This is argumentative.

10 MR. DAVIS: I apologize to the Court.
11

12 Q Do you interpret, Mr. Lewis, Section 58-
13 441.6R, delivery of tangible personal property, an exempt use
14 when the use is for resale outside this state to use or con-
15 sume outside this state? Do you read into the wording, for
16 resale or delivery of tangible personal property?

17 A I consider that exemption applies to items
18 for resale.

19 Q Then, you would read it that it's delivery
20 for resale?

21 A I believe Section 1-51 of the Rules gives
22 a very thorough explanation of 58-441.6R.

23 Q I can't talk to you about what your Rules
24 are saying. Do you read in anything, any limitation in that
25 Section that says the delivery must be for resale? Let me

1 ask you this question. You thought about this in great
2 care and length. Can you tell the Court how, other than for
3 resale, anybody can possibly use the exemption of use if they
4 have a tangible use, by the purchase, taking title, or by
5 storing? If those two items make it tangible, can you imagine
6 any transaction other than resale that would permit a non-
7 taxable delivery and permit the exemption that is provided
8 in this Section?

9 A I think that Section lists a great number of
10 them.

11 Q Would you refer to one?

12 A Machine tools.

13 Q Why, because they are given specific exemption
14 under 58-441.6, the first paragraph relating to manufacture?

15 A That's right.

16 Q That is the specific exemption, but I'm ask-
17 ing you, can you tell me any way that I can take title to
18 property in Virginia, store it, and get it out under this
19 exemption, delivery outside the State of Virginia for use
20 or consumption? How can I get that non-taxable delivery
21 unless I adopt your restrictive and constrained interpreta-
22 tion that says it must be a delivery at resale?

23
24 MR. FELTON: I object to that question
25 on the same basis.

F. Lewis - Cross

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1 THE COURT: It's sustained. It's argumenta-
2 tive.

3
4 BY MR. DAVIS: (Continuing)

5 Q Will you concede that all the items that
6 have been mentioned here are delivered outside of this state
7 except for those in Virginia that we have agreed to?

8 A I really 'don't know. If you say this is the
9 way it is, I would be glad to agree with you, but I don't know
10 if it's certain.

11
12 THE COURT: There is no contrary evidence.

13
14 BY MR. DAVIS: (Continuing)

15 Q Well, will you concede that the use and
16 our consumption of these items that were put into controversy
17 are for outside the state?

18 A I think both in and out.

19
20 MR. DAVIS: That will be all, Your Honor.

21 THE COURT: Is there anything further?

22 MR. FELTON: No, sir.

23 THE COURT: Thank you, Mr. Lewis. You may
24 stand down.

25

-101A-

WITNESS STOOD ASIDE

1 THE COURT: Call your next witness.

2 MR. FELTON: If Your Honor please, we
3 call Jerry Edwards as the next Commonwealth witness.
4

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JAMES EDWARDS, JR., a witness called by
the Commonwealth, having been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. FELTON:

Q Please state your full name.

A James Edwards, Jr.

Q Do people call you Jerry?

A Right.

Q With whom are you employed?

A The Department of Taxation in the
Richmond District.

Q And, will you tell the Court your capacity?

A I'm an auditor.

Q Will you tell the Court whether or not in
the year 1974, you conducted a corporate income tax audit
of Miller Morton Company?

A Yes, I believe it was in 1975.

Q And, will you tell the Court whether that

J. Edwards - Direct

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1 audit reflected income taxes for the year 1971?

2 A Yes, it did.

3 Q Which is one of the years involved in this
4 case, is that right?

5 A Correct.

6 Q Would you tell the Court, please, whether
7 as a result of that audit, a final filing of the corporation
8 income tax return was filed, and whether this is the income
9 tax return?

10 A Yes, that is the subject's audit.
11 This is the original income tax return filed, yes.

12
13 MR. McVEY: It's understood that our
14 objection runs through this entire line of testimony
15 for the reasons we have previously stated.
16

17 BY MR. FELTON: (Continuing)

18 Q Can you tell us how samples and promotional
19 items were treated as expenses on this corporation income
20 tax return?

21
22 THE COURT: It's immaterial, because it's
23 been established conclusively by the report.

24 MR. McVEY: The return speaks for itself.

25 MR. FELTON: It was only a foundation question

J. Edwards - Direct

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1 Q Tell the Court, please, whether or not
2 the inventory items that were used as samples were attributed
3 to Virginia for the apportionment purposes as a result of the
4 return filed in 1971 by Miller Morton?

5 A We did the audit, and as Mr. Davis mentioned
6 earlier, there are three apportionment factors, property,
7 payroll, and sales. There are certain adjustments through
8 our audit, and in 1971, one adjustment was the addition of
9 samples in the property factor. All of these are attributable
10 to Virginia in beginning and ending inventories. Let me
11 restate that. That is very misleading. When I say beginning
12 and ending, we use two amounts for the property factors, the
13 beginning and ending figures to arrive at an average. The
14 property factor in the 1971 return includes items-- may I
15 list these for the record? Inventories, land, buildings,
16 automobiles, trucks, manufacturing, furniture fixtures,
17 office, rental agreements, which is multiplied times eight,
18 and the item samples. All of the samples are attributable
19 to Virginia for the property factor of 1971.

20 MR. FELTON: That is all the questions
21 I have of this witness, if Your Honor please.

22 THE COURT: Is there any cross-examination?

23 MR. DAVIS: If Your Honor please, I
24 would like to ask a few questions.
25

J. Edwards - Cross

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CROSS-EXAMINATION

BY MR. DAVIS:

Q Mr. Edwards, do you deal in income tax examinations?

A I have been working for the State of Virginia for one year and a half, and I have conducted several corporate audits for the income tax department.

Q Could I see the return for one minute?

A Now, these are my working papers. This is not the filed return. These are the papers that I did the work on at A.H. Robins by working with Mr. H. Carlton Townes, through Miller Morton, because A.H. Robins did perform the accounting function in the tax department for Miller Morton. Now, a copy was reviewed with Mr. Townes, and I believe they agreed with it, and this is my copy of my working papers for file purposes only.

Q Mr. Edwards, coming in as an income tax agent, would you have any difficulty in making an adjustment on the Miller Morton return if you found that they had items listed as samples located in Virginia when you knew that those samples were in California, Illinois, and Texas? Would you have any difficulty in making an adjustment and knowing the size of that property in that state, pulling that out of the property factor in the State of Virginia?

A Now, you mentioned, I believe, an IRS agent--

J. Edwards - Cross

101

1 Q I'm not speaking about IRS. I'm speaking
2 of what you would do.

3 A Well, I would request the information and
4 if the information was given to me in one lump sum, and they
5 agreed, it would go with the Virginia property factor, I would
6 put it there, yes.

7 Q Do you know whether there was any inven-
8 tory physically located on that given date beginning and
9 ending in the year of the period in any of these other ware-
10 houses?

11 A I take the information that the tax
12 coordinator or the tax manager for the company gives me. We
13 coordinate with the federal returns in examination of it.

14 Q But, you of your own knowledge have no
15 information whether all of that inventory was here or located
16 at another state?

17 A I have to admit, I'm not a public accoun-
18 tant, and I don't see the physical counting of the inventory.
19 No, I accept what is on the records of the company, and the
20 information that is given to me. It's impossible for the
21 Department of Taxation to be in every place for the counting,
22 physically, of inventory for property factors.

23 Q But, if you are examining, I think you
24 will agree that sometimes, taxpayers make mistakes in their
25 own tax returns?

F. Edwards - Cross

102

1 A I'm sure they do, but I only accept the
2 figures that they give me, and try to verify them to the
3 best of my ability, and they accepted this audit.

4 Q But, you don't know of your own knowledge
5 whether these figures are correct?

6 A I was not there for the physical counting,
7 and I have to admit that, because I wasn't there.

8
9 MR. DAVIS: Your Honor, that is all I have.

10 MR. FELTON: I have one last question by
11 way of verification.

12
13 REDIRECT EXAMINATION

14 BY MR. FELTON:

15 Q You did get the figures that you testified
16 to from Miller Morton, the people in this case, didn't you?

17 A Yes, I must admit I did coordinate with
18 Mr. Townes, because they are the only people I did visit
19 to get this information from, yes.

20
21 MR. FELTON: Thank you very much.

22 MR. DAVIS: I am surprised that the
23 questioning was only to this extent, because the
24 testimony has shown that the items were shipped
25 out of the regional inventory, and not carried as

J. Edwards - Redirect

103

1 samples until there had been a use whether here
2 in Virginia, California, or otherwise. So, from
3 the testimony, I have doubt, as to the figures, and
4 I'm sorry that the State didn't see fit to ask the
5 witness when he was here about that matter.

6 THE COURT: Thank you. Mr. Edwards,
7 you may stand down.

8
9
10
11 WITNESS STOOD ASIDE
12

13 MR. FELTON: If Your Honor please, that
14 concludes the Commonwealth's case.

15 THE COURT: Is there any rebuttal testimony?

16 MR. DAVIS: We will file briefs, and it
17 would be appreciated, if Your Honor please, if we
18 could have thirty days.

19 THE COURT: All right. What is the order
20 in which you want to file?

21 MR. FELTON: The applicant should file
22 first, if Your Honor please.

23 THE COURT: You file in thirty days, Mr.
24 Davis.

25 MR. DAVIS: Could we file simultaneous briefs?

1 THE COURT: I think a responsive brief
2 would be better, because we wouldn't have so much
3 duplication.

4 MR. FELTON: Would a transcript be helpful
5 to the Court?

6 THE COURT: I think it would, because I
7 have made notes, and it was long, and it would be
8 very helpful in understanding things.

9 After you have filed the briefs, do you
10 want an opportunity to have an oral argument on it?

11 MR. FELTON: If the Court has any question,
12 I'm going to try to cover everything in the brief.

13 THE COURT: Let me read over your briefs,
14 and if you want, I'll give you a call and you can
15 send them. Otherwise, I'll just go ahead and decide
16 it, and adopt the line on that decision.

17 MR. FELTON: I think Mr. Davis is going to
18 be cut short. Would the Court entertain an extension
19 for the filing of the transcript?

20 THE COURT: Would you like that, Mr. Davis?

21 MR. DAVIS: That is the first time Mr. Felton
22 has been nice to me all day.

23 THE COURT: Your thirty days will commence
24 to run after the transcript becomes available. In
25 the interim, I'm going to set this on a ninety day

1 tickler, so I assume it will be briefed and the
2 transcript will be available by that time.

3 Thank you, gentlemen.
4
5

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7 HEARING CONCLUDED
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CERTIFICATE OF COURT REPORTER

I, Eileen M. Beran, hereby certify that I was
the Court Reporter in the Circuit Court of the City of
Richmond, Division I, on January 6, 1976, at the time of
the hearing herein.

I further certify that the foregoing transcript
is a true and accurate record of the testimony and other
incidents of the hearing herein.

Given under my hand this 20th day of January,
1976.

ORIGINAL SIGNED
EILEEN M. BERAN, Court Reporter

EXHIBITS

COPY 1

RETURN THIS COPY ALONG WITH YOUR
REMITTANCE MADE PAYABLE TO THE
TREASURER OF VIRGINIA IN ENCLOSED
SELF-ADDRESSED ENVELOPE.

REGISTRATION NUMBER

146479-5

BILL NUMBER

0000903 07-21-72

DO NOT USE THIS SPACE

FOR DEPT. OF TAXATION USE	PERIOD OF AUDIT	REASON (SEE BACK)	TYPE OF TAX	AMOUNT
210100LPJUL 68 DEC 71		G	LOCAL SALES TAX	\$ 8,817.59
210100LPJUL 68 DEC 71		G	LOCAL SALES TAX PENALTY	529.06
210100PPJUL 68 DEC 71		G	STATE SALES TAX PENALTY	1,585.84
210100SPJUL 68 DEC 71		G	STATE SALES TAX	26,430.64

NAME AND ADDRESS OF DEALER MILLER MORTON CO P O BOX 6235 RICHMOND VA 23230 FOR MILLER MORTON CO	TOTAL AMOUNT DUE & PAYABLE → \$ 37,363.13 THIS STATEMENT DOES NOT INCLUDE ANY AS- SESSMENT OF TAX FOR ANY MONTH OR PE- RIOD OF AUDIT OTHER THAN SHOWN ABOVE.
---	---

COMMONWEALTH OF VIRGINIA

STATEMENT OF SALES AND/OR USE TAXES

ASSESSMENT RESULTING FROM OFFICE OR FIELD AUDIT FOR THE MONTH OR PERIOD OF AUDIT INDICATED ABOVE

FORM ST-22 REV. 7-1-72

COPY 1

RETURN THIS COPY ALONG WITH YOUR
REMITTANCE MADE PAYABLE TO THE
TREASURER OF VIRGINIA IN ENCLOSED
SELF-ADDRESSED ENVELOPE.

REGISTRATION NUMBER

146479-5

BILL NUMBER

0000904 07-21-72

DO NOT USE THIS SPACE

FOR DEPT. OF TAXATION USE	PERIOD OF AUDIT	REASON (SEE BACK)	TYPE OF TAX	AMOUNT
210000LPSEP 66 JUN 68		G	STATE SALES TAX PENALTY	\$ 94.44
210000LPSEP 66 JUN 68		G	STATE SALES TAX	1,573.57

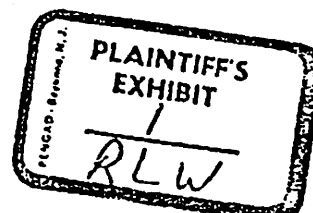
NAME AND ADDRESS OF DEALER MILLER MORTON CO P O BOX 6235 RICHMOND VA 23230 FOR MILLER MORTON CO	TOTAL AMOUNT DUE & PAYABLE → \$ 1,668.01 THIS STATEMENT DOES NOT INCLUDE ANY AS- SESSMENT OF TAX FOR ANY MONTH OR PE- RIOD OF AUDIT OTHER THAN SHOWN ABOVE.
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COMMONWEALTH OF VIRGINIA

STATEMENT OF SALES AND/OR USE TAXES

ASSESSMENT RESULTING FROM OFFICE OR FIELD AUDIT FOR THE MONTH OR PERIOD OF AUDIT INDICATED ABOVE

FORM ST-22 REV. 7-1-72



REPORT OF FIELD AUDIT

DEPARTMENT OF TAXATION
SALES AND USE TAX DIVISION
P. O. BOX 6-L - RICHMOND, VIRGINIA 23215

TAXPAYER'S COPY

NAME OF
DEALER Miller Morton Company

TRADING
AS _____

BUSINESS

ADDRESS 2007 N. Hamilton Street, Richmond, Virginia 23230


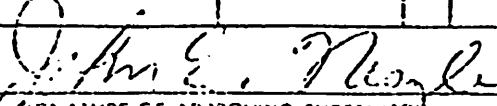
MAILING

ADDRESS P. O. Box 6235, Richmond, Virginia 23230

REGISTRATION NUMBER		BUSINESS CODE													
216	146479	5	89-C												
PERIOD OF AUDIT TO		MEASURE OF TAX		TAX		PENALTY *		INTEREST TO		TOTAL					
STATE TAX 9/1/66 - 1/1/72		1,803,849 24		52,524 28				3,151 46		55,675 74					
LOCAL TAX 9/1/66 - 1/1/72		1,681,301 28		16,813 01				1,008 79		17,821 80					
TOTAL				69,337 29				4,160 25		73,497 54					
LESS: Check #010365 for \$34,466.40 dated 6/7/72				32,515 50				1,950 90		34,466 40					
BALANCE				36,821 79				2,209 35		39,031 14					

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

ANALYSIS OF MEASURE OF TAX BASES OF TRANSACTION		STATE		LOCAL	
Non-contested:					
General purchases purchased out of state in sample on which no tax was paid for the period 9/1/66 to 7/1/68 @ 2% tax rate		40,084 01			
General purchases in sample on which no tax was paid for the period 9/1/66 to 7/1/68 @ 3% tax rate.		34,949 28		34,949 28	
General purchases in sample on which no tax was paid for the period 7/1/68 to 1/1/72 @ 4% tax rate.		697,430 88		697,430 88	
General purchases not in sample on which no tax was paid for the period 12/1/69 to 1/1/72 @ 4% tax rate.		39,606 20		39,606 20	
Capital assets purchased out of state on which no tax was paid for the period 9/1/66 to 7/1/68 @ 2% tax rate.		4,522 98			

				1-30-72	
SIGNATURE OF AUDITOR		DATE		SIGNATURE OF APPROVING SUPERVISOR	
				DATE	

ENGAD - Bayonne, N.J.

81-3

7

-115

Sergeant's® PET CENTER

PLAINTIFF'S
EXHIBIT

3

RLW

Sergeant's
PET CENTER

Merchandiser Fixture

- Contemporary Design
- Elegant Teakwood Finished Pegboard
- Solid Steel Shelving
- Solid Steel Reinforcement Supports
- Insure Proper Placement With Product Coding.
- Reorder Quickly And Efficiently.
- Maintain Product Mix With Minimum Inventory.
- Eliminate Out-Of-Stocks.

Meet The Exploding Consumer Demand With A Full Line Of Sergeant's Pet Products.

Sergeant's Is Your Assurance Of Quality—For Over One Hundred Years.



47-1/2" x 20" x 68-5/8"

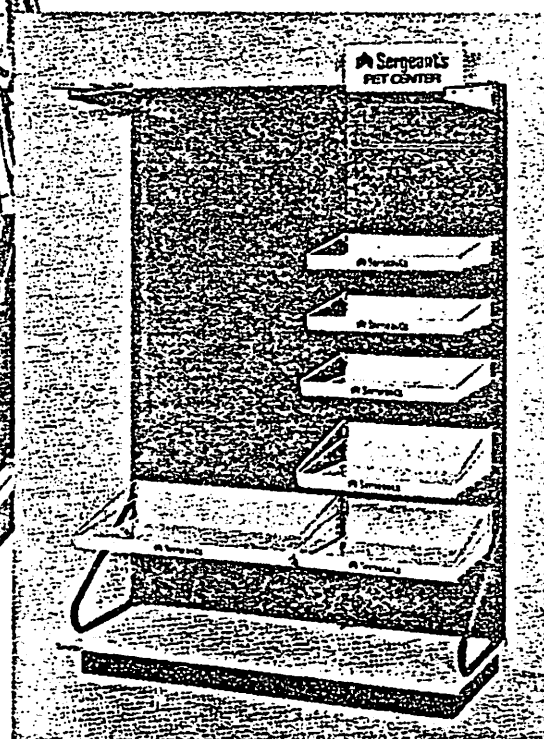


ILLUSTRATION 7

-116A-

MILLER-MORTON
A SUBSIDIARY OF AMROBINS
Rochester, New York 14609

MARKETERS OF *ChapStick*® PRODUCTS / *Chaparral*® PRODUCTS / *Sergeant's*® PET CARE PRODUCTS

Printed in U.S.A. 50-7-AT



MILLER-MORTON COMPANY

Pet Service Agreement

AGREEMENT, as of this 26th day of November 19 71,
between Miller-Morton Company, Richmond, Virginia (the "Company") and
VEAGER WHOLESALES COMPANY of TULSA,
OKLAHOMA 74101 (the "Merchandiser").

Merchandiser represents that it is capable of and will perform a full
rack jobbing function in connection with the Company's products.

Merchandiser personnel will write each order in each retail placement
outlet on a periodic basis frequently enough to maintain adequate stocks.

Accordingly, the Company will deliver to the Merchandiser a number (to be
agreed upon) of racks suitable for the displaying for sale of the company's
products and upon such delivery title thereto shall be relinquished to the
Merchandiser.

The Merchandiser agrees to place each such rack in an outlet of the type
and location known to be suitable for and productive in the contemplated
operation. Merchandiser will make the availability of such racks known to
each of its customers handling the products of the company.

Merchandiser personnel will return to each retail outlet each time an order
is delivered and will personally place the Sergeant's goods in the appropriate
place on the rack.

Merchandiser will:

- (a) Purchase from the Company for sale from each such rack such of the Company's products and complimentary products of other suppliers which the Company may designate from time to time as may be appropriate to the maintenance of a full line at each location.
- (b) Maintain adequate stock of such products which shall be continuously prominently and attractively displayed on such racks.
- (c) Insure that it's representatives on a regular basis generally maintain the rack and merchandise display thereon in a clean, orderly, and complete condition.
- (d) Allow the Company to examine periodically purchase records and product movement histories of retail customers.

This agreement may be terminated by either party upon 30 days written notice.

MILLER-MORTON COMPANY

By

Kent F. Spitzneller

Yeager Wholesale Co

Merchandiser

By

Marvin A. Yeager

\$1.00

PLAINTIFF'S
EXHIBIT
5
RLW

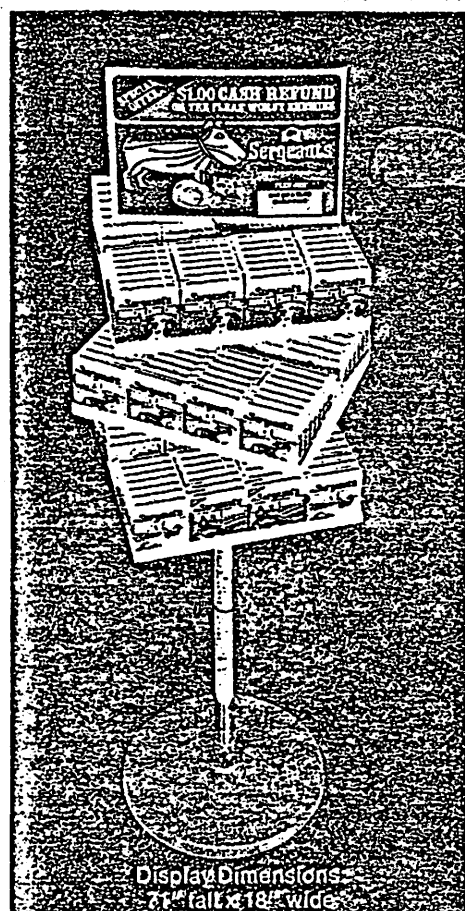
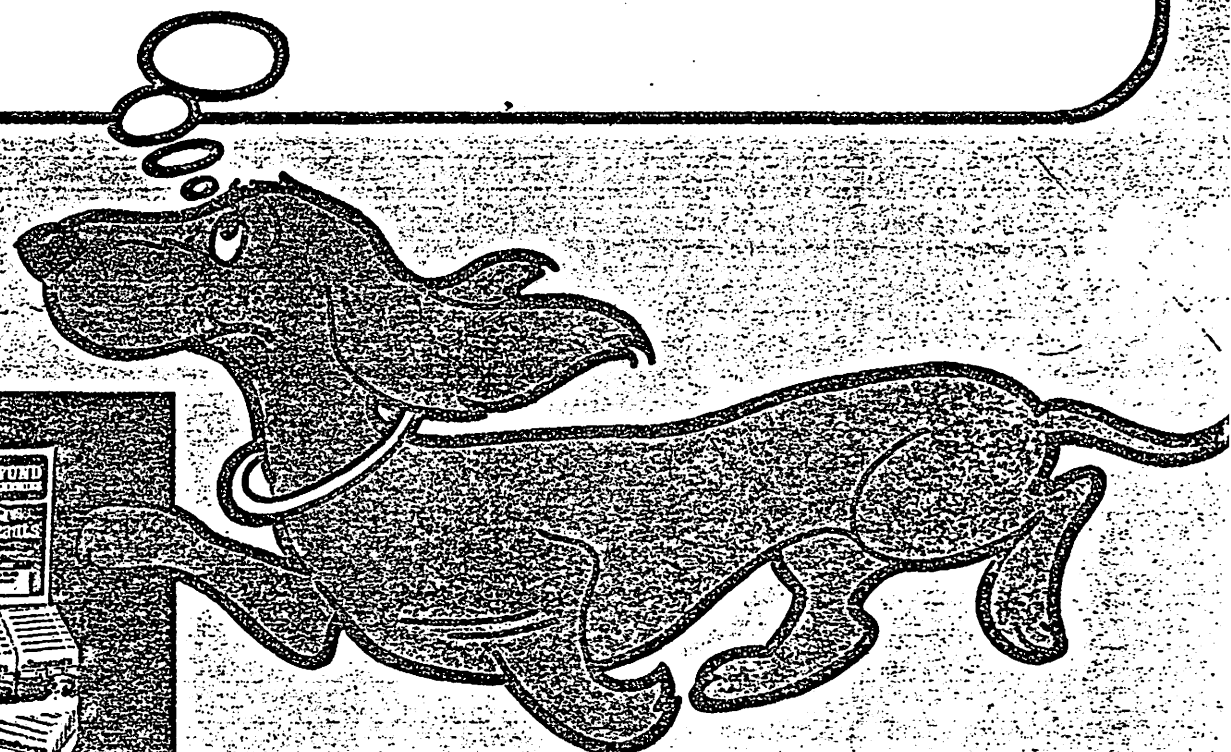
CONSUMER

CASH REFUND

ON THE FLEA'S WORST ENEMIES

(See display for details)

Case Pack: 1 display
Case Weight: 33 lbs.
Case Cube: 4.6



\$20 OFF INVOICE*

PLUS

\$10 CONTRACTUAL MERCHANDISING ALLOWANCE

STOCK #0164

Contents: 7 Doz. Reg. Dog Collars; 1 Doz. Large Dog Collars; 3 Doz. Cat Collars;
5 Doz. Dog Flea Tags.

Total Retail	\$386.28	Promotion Retailer Cost ..	\$240.00
Regular Retailer Cost	\$260.00	Profit	\$146.28
Profit	37.9%		

*Equivalent to 1 free with 11 plus 2% Early Bird Allowance.

-119A-

MILLER-MORTON

PLAINTIFF'S
EXHIBIT
6
RLW

\$1.00 CONSUMER CASH REFUND ON THE FLEA'S WORST ENEMIES

(See display for details)

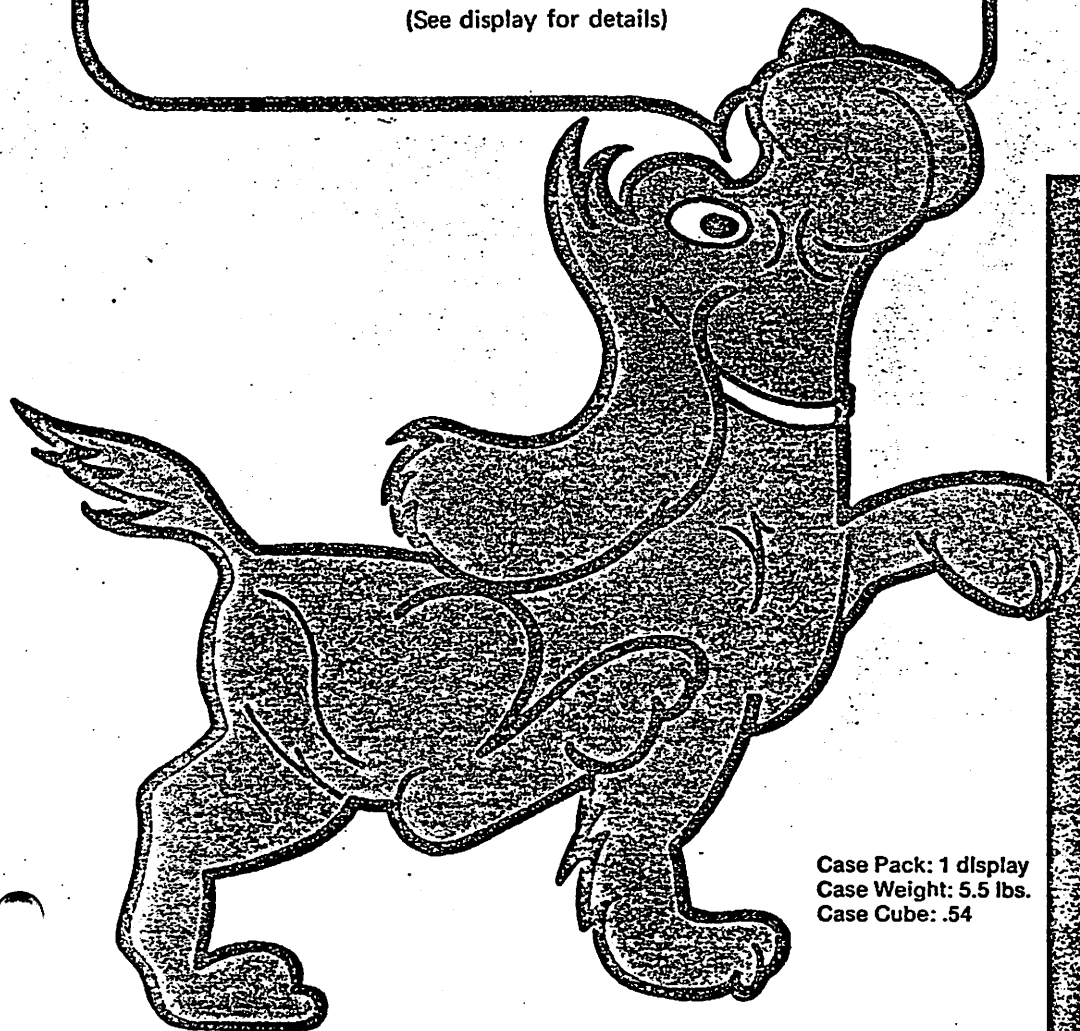
\$4.00 Contractual Merchandising Allowance

STOCK #0168

Contents: 14 Reg. Dog Collars; 4 Large Dog
Collars; 6 Cat Collars; 12 Dog Flea
Tags

Total Retail	\$73.32
Regular Net	\$37.00
Profit	\$36.32
Profit	49.5%

Orders not accepted after April 30, 1972



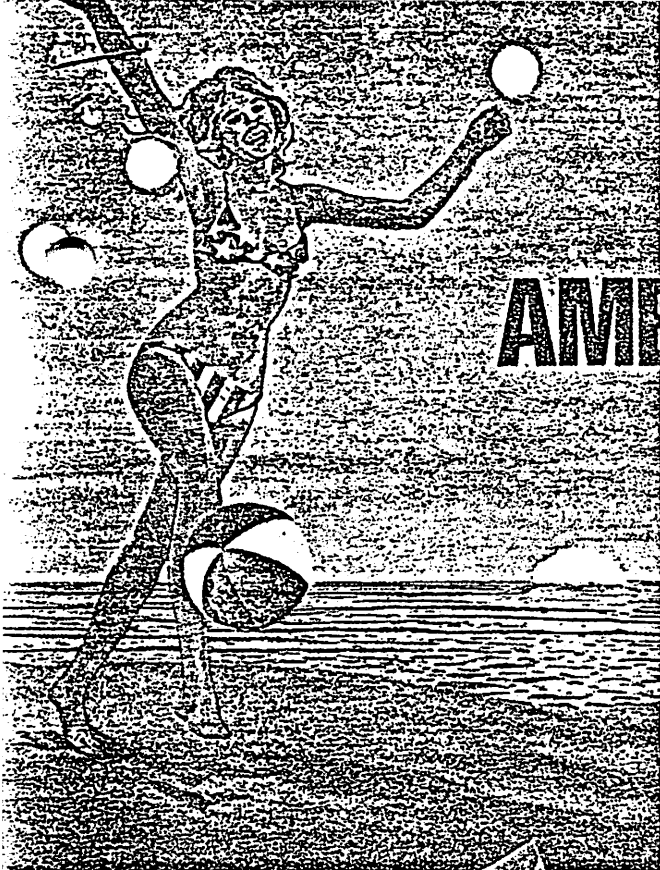
Case Pack: 1 display
Case Weight: 5.5 lbs.
Case Cube: .54



-120A-

MILLER-MORTON
A SUBSIDIARY OF AMERSON

Suggested Retail: Sentry Dog Collar, \$1.98. Cat Collar, \$1.98. Dog Flea Tag, \$1.98. Lg. Dog Collar, \$2.49.



ChapStick
LIP BALM

AMERICANA SUN SET CONSUMER OFFER



Plus

\$1.50 CONTRACTUAL MERCHANDISING ALLOWANCE



STOCK #8103

Contents: 144 ChapStick® Lip Balm
(Includes 36 Lip Balm FREE)

Total Retail	\$70.56
Regular Retailer Cost ..	\$36.00
Profit	\$34.56
Profit	49.0%
Unit Cost25

Case Pack: 1 offer
Case Weight: 12 lbs.
Case Cube: .572 cu. ft.

-121A-

Includes
36 Chap Stick Lip Balm FREE

MILLER-MORTON

ILLUSTRATION 8

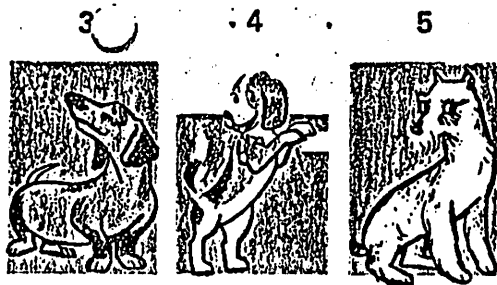
FEB-76-W

 **Sergeants**

PET CARE BOOK



PENGAD - Bayonne, N.J.
**PLAINTIFFS
EXHIBIT**
9
RLW



fashion and choose the rarest dog they can find, such as the African Basenji.

But whatever your choice, there are a few points that you must consider. Take into account the size of your home. A big dog will need more room to run in.

Generally, small dogs are better adapted to city life, larger ones to the country. But this is no hard and fast rule—many a Great Dane lives happily in an apartment and Chihuahuas thrive on farms. Any dog will be content where his master is.

If he's with the people he loves, that's all he needs.

Cost of upkeep is an important factor. You might have to mortgage the old homestead to feed a St. Bernard, while a Pekingese needs a very small allowance.

Long-haired dogs are more trouble to look after than short-haired ones. They'll need more combing and brushing and will probably shed more on the living room rug. Know how much time you're willing to give to grooming your dog before you decide.

As far as character is concerned, there is nothing to choose between breeds. There is no such thing as a vicious breed or a smart breed. There is no one breed that is always good with children and no nervous breed.

These characteristics are all individual. When buying a puppy study the parents, if they're available. Their puppies may inherit their personalities. There are smart dogs and dull dogs, good dogs and bad dogs in every breed.

Dogs are as highly individual as people. It's you raise your puppy that's going to count the most.

WHAT ABOUT HEALTH? You may get your dog from a private home, a breeder or a pet-shop. He may be a gift or turn up on the doorstep and adopt you. But however you get him (or vice versa), if possible take a quick look at the place he came from and his health.

Keep these points in mind:

You can be reasonably sure about the health of a puppy bought from a breeder or a pet shop. Dogs are their merchandise. Their business demands that their stock be healthy and they take care to see that it is.

Also, you'll get the exact age and pedigree (if any) of your dog. You'll learn whether he's been wormed and inoculated. You may pay more but it's well worth it.

Before you accept any dog, use this check list:

1. See that the dog's coat is smooth and glossy. A dull coat can be a sign of general ill-health.
2. Are his nose and eyes clear? Running eyes and nose are symptoms of several serious diseases including distemper.
3. Do his eyes sparkle? Is he full of pep? Try not to fall for a listless, dull-eyed puppy out of pity.
4. Take the dog's temperature, or ask the owner to. If it's over 102°, he has a fever and there's probably something wrong.
5. Look at his mouth and teeth. Teeth should be white, gums firm and pink. Discolored teeth usually mean the puppy was sick during teething age (3½ to 5 months). Whitish gums indicate anemia.
6. Look at his ears. They should be smooth and pink inside, free from inflammation and accumulated wax.
7. Check his legs—crooked bones may mean he has rickets.
8. Watch for hernias. Common in puppies is the navel hernia, a soft, round lump in the middle of the stomach.
9. See if he has patches on his coat or the skin on the inner side of his legs. They may mean mange, ringworm, eczema or rash.
10. Always test a dog for deafness. Stand behind him and make a noise. If you cannot get his attention after several tries, he may well be deaf.

What's a worn-out bedroom slipper worth in the balance against a **C**ome, proud and happy dog? A relationship based on friendship and mutual respect will be far pleasanter than that between master and slave.

The best thing to do for a young puppy is to give him plenty of affection and build up his confidence in you.

There is one rule to follow in training a dog and only one: Praise him when he does right, scold him when he does wrong. You must be patient, consistent and firm at all times.

SHOW HIM WHAT TO DO. Always show him patiently and thoroughly just exactly what you want him to do. If you want him to lie down, push him down in a lying position; show him what "lie down" means. Keep repeating this until the dog learns to lie down without being pushed.

The dog's mind tires easily. So five-minute training periods, several times a day, will be much more profitable than hammering away at your dog for a long stretch.

Don't let your dog get away with something one time, and scold him the next time. You'll only confuse him. And you must always use the same words and the same tone of voice when you scold him. Be firm.

By "firm," we mean firm. When you say "bad," "shame," or any word you want to use, don't say it in a half-hearted way. If your dog gives you that hurt look, don't fall for it.

Give him lots of praise, too, when he's good. Be consistent with your praise. Let him know that you're always happy to see him behaving well. Again, use the same words and tone of voice whenever you praise your dog. He'll recognize it sooner and respond more quickly.

HOUSEBREAKING. If you've never had a young puppy before, you'll be astounded at how often he has to relieve himself.

While the situation sometimes looks pretty funny to an outsider, it can get to be a terrible nuisance. You'll want to start housebreaking your puppy as soon as you get him home, if he's old enough.

Probably the best way to start this vital part of every well-bred dog's primary education is to train him to use newspaper.

Find a good place, convenient for the puppy. Be sure it's out of the main traffic lanes in your home. Put down several

layers of newspapers. Once you've started training the dog, don't move the papers to some other place. You **C**ouldn't like it either if the bathroom kept moving all over the house.

After meals or when the puppy first wakes up, watch him carefully. If you see him start to sniff around or squat down, snatch him up quickly and put him on the papers.

The trick is to catch him just as he's getting ready to start. It's quite a trick, too. Puppies are almost instantaneous. If you're too late in your snatching (which will be often), pick the puppy up anyhow, scold him and lead him over to the paper.

Don't ever scold him for a previous mistake. It must be done immediately after or he won't know what you're scolding him for, and he'll worry about it.

This routine will seem discouraging to you at first, but there will come a day—and some puppies learn within a few days—when he will go to the paper all by himself. On this occasion, you must make a great fuss over him. He has caught on at last.

Paper training is the first step. Now you can start training your puppy to use the great outdoors. Take him outside at regular intervals. If he does perform, praise him extravagantly. (If he doesn't, no harm's done.)

It will help at first to take one of the newspapers he's already used along. Put it on the ground in a suitable spot. Let the puppy sniff it—it may give him the right idea.

Take away the newspapers in the house. (Except at night! Until he develops perfect control, nighttime is never really safe.) Continue to scold him for any mistakes.

And one day your dog will come up to you and tell you that he needs to go out. Heart bursting with pride, you get up and take him out—the Battle of the Puddle is over!

When mistakes do happen, it is a good idea to have a can of *Sergeant's Skip-Stain* on hand. Urine bleaches carpets—leaving unsightly spots. *Skip-Stain* neutralizes this bleaching action—if applied within 24 hours—and prevents ruined carpets. *Skip-Stain* is absolutely safe on rugs and kills unpleasant after-odors, too.

CHASING CARS. This is a dangerous habit for a dog. It should be nipped quickly and early.

One way to cure it is to have a friend drive past your

house. When your dog chases his car, have him squirt a water pistol in his face. Load it with a mild solution of soapy water. This will sting but it won't do permanent harm.

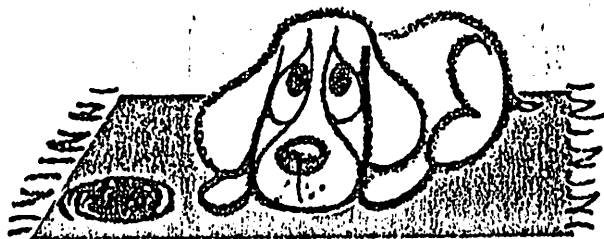
COME WHEN CALLED. Tie a long rope on your dog and let him wander off. Call him. The instant you call him, give the rope a tug. If he does come, pat him, praise him, and reward him with a tidbit.

BARKING. This is a tough one. Dogs who bark every time there's a slight noise are nervous dogs and probably have been since puppyhood.

If a puppy barks at slight noises, don't scold him. Try to reassure him. For instance, he may think he hears a noise out in the kitchen. Take him out to the kitchen in your arms and show him there's nothing there.

JUMPING UP ON PEOPLE. Jumping up on you is one way that your dog has of showing affection for you. This flattery may please you, but it may not be so attractive to others.

If you want to break him of this habit, scold him each time he does it. Try one of these deterrents as he jumps: Bump his chest with your knee. Bump his nose with the flat of your hand. Step lightly on his rear paws—saying "Down" sharply.



Feeding and nutrition



In your new role as dog-owner, it won't take long to discover that your dog thinks and talks a great deal about food. For the sake of his health, you'd better think about it, too.

The way you feed your dog is the most important single factor in keeping him healthy as he grows up. Improper feeding is the direct cause of many diseases.

There are as many ways of feeding dogs as there are dogs. What a dog eats is what he has been trained to eat. It's up to you to see that he gets used to the right kind of food.

DIETS FOR PUPPIES. Puppies are usually weaned when they are about six weeks old. However, at three or four weeks, they may get cow's milk with an egg beaten up in it, in addition to their mother's milk.

When they're six weeks to two months old, shredded meat or, preferably, a prepared dog food may be added to their menu. A puppy needs four feedings a day until he is around six months old, at which time two meals a day will be enough. When he grows up, feed him only once a day.

DIETS FOR GROWN DOGS. Many leading dog food experts recommend feeding only meal-type foods to your dog. There are many well-tried and tested brands available.

These meals contain meat, organs, bone, and often fish, with simply the water removed. They are dependable and nutritious, but dogs not raised on them from puppyhood often have to be trained to eat them.

Canned dog foods of many brands are also excellent, and the dog may like them better.

If you prefer to prepare the dog's food yourself, or use table scraps, feed him fresh, raw or cooked meat daily (beef, hamburger, veal, lamb, or liver).

At least half his diet should be meat, although fresh cooked fish, cottage cheese, milk or buttermilk can be used. These can be bulked up with cereals, cooked rice, and vegetables.

HOW MUCH SHOULD YOUR DOG EAT? You'll have to use your own judgment. Don't let the dog decide for you! He'll eat you out of house and icebox if you let him.

Watch his weight and figure. If he starts to develop "middle-age spread," put him on a strict diet. He'll put on a big show and tell all the neighbors that you're starving him to death, but don't let him wear you down. Be firm and tell him it's for his own good.

If he gets finicky about eating and just picks at his food, he may be overfed. He may also be sick and not feeling hungry.

FEEDING FALLACIES. Thousands of people have mistaken notions about dog feeding. Here is the truth about some of the commonest fallacies.

Dogs do not have to have raw lean meat. They thrive on cooked or dried meat as well as on raw.

Dogs can digest starch and sugar as well as do—provided the starch is cooked.

Fat is not harmful to dogs. Some hard-working dogs can digest rations with up to 50% fat.

Milk and candy do not cause worms. Worms are caused by worm eggs, which are not found in milk or candy.

Garlic does not eliminate worms.

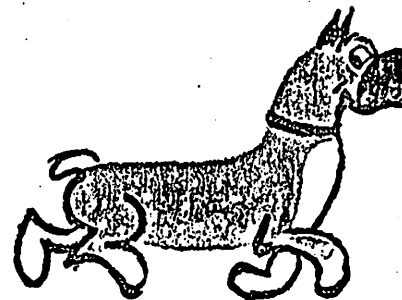
There's nothing wrong with a dog gulping his food. Dogs do that naturally, and the stomach takes care of it.

Dogs do not need to chew hard food or bones to keep their teeth sound. Chewing bones does help remove tartar from the teeth, though.

Different breeds of dogs do not need different foods. Toy breeds eat exactly the same foods as Great Danes.

YOUR DOG NEEDS VITAMINS. You may feed your dog most carefully and conscientiously. But it is still possible for him not to have the right vitamin balance in his meals. Like anyone else, dogs can eat their fill and still be vitamin-starved.

Lack of the proper vitamin balance in the diet can lead to serious diet deficiency diseases. You can make sure you are supplying your dog with important vitamins by supplementing his feeding with *Sergeant's Vitapet Tablets* or *Vitapet Powder*.



Vitapet Tablets and *Vitapet Powder* are balanced multi-vitamin preparations based on studies in dog nutrition.

The daily use of *Vitapet Tablets* or *Vitapet Powder* will promote good growth of sturdy bones and teeth and help guard puppies against rickets. They will help keep older dogs in tip-top shape. In addition, use of *Vitapet Tablets* or *Vitapet Powder* helps promote a glossy coat and healthy skin on all dogs and cats, too.

These supplements stimulate lagging appetites. They help prevent the serious diet deficiency disease "black tongue" and aid in its treatment. And they help increase your dog's resistance to colds and other ailments that may lead to serious trouble.

Vitapet Powder—containing vitamins and minerals, too—is simply sprinkled on the food at mealtime. *Vitapet Tablets* are easy-to-take tablets.

Daily use of *Vitapet Tablets* or *Vitapet Powder* supplies:

Vitamin A . . . enough to promote good growth, to prevent certain eye changes that lead to night blindness, to increase resistance to disease.

Thiamin (B₁) . . . enough to stimulate lagging appetite that results from deficiency of thiamin (B₁) in the diet, and to help prevent types of nervous illness.

Vitamin D . . . enough to help prevent or treat rickets, to help the growth of sturdy bones and sound teeth. Important to the pregnant or nursing female.

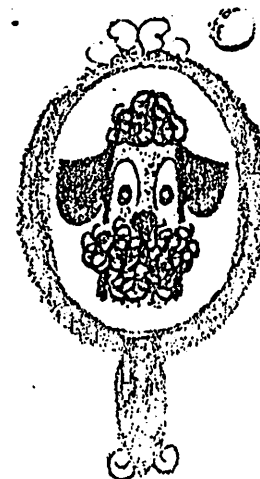
Riboflavin (B₂) . . . a necessary factor in promoting normal growth and a good condition.

Niacin . . . to help prevent "black tongue" and aid in its cure. (See page 25.)

Minerals . . . both also contain minerals to fortify the blood, help maintain good health and also promote a glossy coat.



Grooming



Dogs, like most of us, have a great deal of self-respect. They don't like to go around in a dirty, crumpled coat.

They like to smell nice. (Unfortunately, humans do not always agree with dogs about what does smell nice.)

We like clean and well-groomed dogs. And we like them to smell nice, too. (Our kind of nice, not the dog's.)

But dogs are like children in many ways. We can't expect our dogs to hop happily into the tub every Saturday night, so we have to make sure that they stay socially acceptable.

BATHING. There's nothing like a good bath for your dog! But haphazard or incorrect bathing of a dog can ruin his coat and his skin. It is important to use a good cleanser you're sure is free from irritating alkali, or harsh detergents. Use *Sergeant's Skip-Flea Soap*, *Sergeant's Skip-Flea Shampoo* or *Sergeant's Creme Shampoo*.



Skip-Flea Soap is made from mild, bland ingredients. Its oil base adds a glossy sheen to the dog's coat, and tends to keep his skin soft and healthy.

Sergeant's Skip-Flea Shampoo or *Sergeant's Creme Shampoo* contain a unique combination of shampoo ingredients and conditioner which leaves your dog's hair clean and silky. It is especially recommended for those who prefer a liquid soap and for use in hard-water areas. It beautifies as it cleans. It leaves no ring around the tub.

Sergeant's Skip-Flea Soap, *Sergeant's Skip-Flea Shampoo* and *Sergeant's Creme Shampoo* clean his coat thoroughly. They make an abundant, creamy lather that bubbles all through the dog's coat.

They destroy dog odor and substitute their own clean, fresh aroma.

All three products get way down to the hair follicles and wash away dead, lifeless hair, along with dust, flea dirt and eggs.

CLEANING WITHOUT WATER. Next to a bath, there's nothing like a quick cleaning every week with *Sergeant's E-Z Groom*. It offers you the great convenience of an aerosol instant lather.

E-Z Groom cleans your dog without tubbing. Just rub it in and wipe it off. It halts doggy odor, kills fleas and lice, and leaves his coat sparkling clean.

Sergeant's Skip-Bath is a liquid which also cleans your dog without tubbing.

It takes mere minutes to use, and leaves your dog's coat piney-fresh and parasite-free up to a whole week.

Both of these grooming aids take the work out of dog cleaning in the summer. And they reduce the danger of chills and colds in wintertime.

DRY CLEANING. This is another *Sergeant's* way to clean your dog. It is specially valuable for sick dogs, very old dogs and puppies. (Puppies should never be bathed in water until they are at least three months old.) *Sergeant's Dry Cleaner* is a special powder designed to clean and deodorize. It is perfectly safe for your dog and easy to use.

Just dust it on—rub into the coat—and brush it out. It is an ideal cleaning method for cold weather—there is no danger of your pet's chilling or catching cold.

CLEANING THE EARS. Don't ever put water in your dog's ears. Dip a cotton swab in a one-to-ten solution of a suitable disinfectant, squeeze and wipe out the inside of ears. Follow with dry cotton.

BRUSHING. *Sergeant's Dry Cleaner* is an aid to better grooming. Use it each time you brush your dog. It cleans and removes "doggy" odor. Place your dog on a table or box for combing, brushing or grooming. He will learn to enjoy it.

PLUCKING Plucking is a harmless way to remove dead and loose hairs. Any tools for plucking are available in stores. Some pet shops have plucking and clipping services.

Never clip the dog's coat close to the skin. Too close clipping does not help the dog avoid summer discomfort. There is danger of exposure and sunburn of the tender skin. It creates itching and leaves him a prey to insects.

Long-haired dogs whose coats have become too badly matted had best be clipped if they cannot be combed.

Short-haired or wire-haired breeds are either clipped or plucked when warm weather comes.

TOE NAILS. If these grow too long and curl under, they should be clipped. Clip off the curl and no more, as you're likely to cut into the quick.

SHEDDING. Dogs normally shed their winter coat in the spring as the days get warmer. The coat is restored in the fall.

Constant shedding is usually found in house pets which are kept indoors in the wintertime. One of the chief causes of shedding is vitamin deficiency. *Sergeant's Vitapet Tablets* or *Vitapet Powder* help to reduce the condition. Other causes of shedding may be: Keeping the dog in too hot a place. Over-feeding. Scratching due to dirt, fleas or lice. Lack of exercise.



In sickness and in health

For better or worse, you've taken this dog to be your pet. And with the dog has come responsibility. Your dog depends on you for proper food and grooming. When he is sick he needs your help.

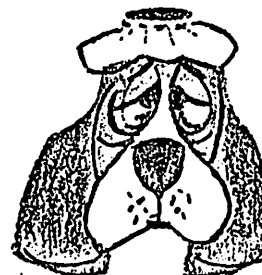
How do you know he's sick? Not by the temperature of his nose!! The noses of perfectly healthy dogs are often dry and hot, while seriously sick dogs can still have cool, wet noses.

The one really necessary item in your dog's medicine chest is an ordinary rectal thermometer.

The dog's normal temperature runs from 101° to 101.5°. To take his temperature, lubricate the thermometer and insert it in the dog's rectum. Leave it there, keeping the dog quiet and calm, for whatever time is specified by the makers of the thermometer. This is usually two minutes.

If there is fever give the dog aspirin: one tablet, one to three times a day. This helps reduce temperature, makes the dog feel better.

Many ailments can afflict your dog. In the sections that follow, we cover the most common ones, and the ones you can treat easily and safely at home.



Worms

Worms are usually the first problem that the new dog owner has to face.

Large roundworms rob puppies of the nourishment they need for a healthy, happy life. In mature dogs, worms sap vitality and health. They lower the dog's resistance to disease, or may prevent his recovery from another ailment.

Your puppy's health depends on you—start him right.

The simple facts about worms are these:

It is safe to say that every dog will have worms at some time.

Dogs pick up worms through no fault of theirs or yours.

They get them from the ground or from insects. They can get them from rubbish or other dogs.

With rare exceptions, every puppy is born with worms or gets them within a few days.

Every normal puppy should be wormed after weaning, at about five or six weeks.

As a dog grows older, these parasites cause him less trouble and discomfort. But they can always lower his resistance, make him susceptible to disease. By stealing your dog's vitality and good spirits, worms rob you of much of the pleasure of his companionship.

The most common types of worms affecting both puppies and grown dogs are large roundworms, hookworms and tapeworms.

When you accept a new puppy, find out if he's been wormed. If not, start him right and worm him to insure his health.

Worming your puppy or dog at home is now easier than ever. Symptoms and treatments are described below.

LARGE ROUNDWORMS (ASCARIDS). Nearly every puppy must be treated for these worms at an early age. The worms are often passed on by the mother before birth. They can be fatal if not destroyed.

The roundworm is from 1½ to 8½ inches long. It is about 1/16 of an inch thick and white.

Symptoms: Puppies show digestive disturbances, bloated stomach, and a dull and lackluster coat and general ap-

pearance. Mature dogs have the same symptoms to a lesser extent.

Sometimes you'll see the roundworm itself in the stool or vomitus. It may be coiled up like a watchspring.

Treatment: *Sergeant's Worm-Away* is the result of a recent discovery. It gives dog owners an easy, safe and sure way to control large roundworms. Just mix it with the dog's regular food, as directed on the package. There are no messy after-effects.

Don't let large roundworms ruin your puppy's health. Get him off on the right foot with *Sergeant's Worm-Away*.

HOOKWORMS. The hookworm is white, about ½ an inch long and very thin. Hookworms are especially dangerous because they attach themselves to the intestines and feed on the dog's blood.

Symptoms: Your puppy or grown dog may look anemic. His gums will be nearly white. A puppy may show a rapid loss of weight. The animal becomes more and more listless. There may be diarrhea.

Hookworms are almost never seen in the stool or vomitus, but there may be traces of blood.

Treatment: If your puppy or dog shows symptoms of hookworms, give him *Sergeant's Puppy Capsules* if he weighs less than 10 pounds. Dogs 10 pounds or over should have *Sergeant's Sure Shot Capsules*. These remedies will also take care of large roundworms, if they are present.

After worming, give your dog *Sergeant's Vitapet Tablets* or *Vitapet Powder*. They will help build good rich blood.

TAPEWORMS. These are elongated flat worms, made up of many segments. They grow to a length of one or two feet. Puppies seldom have them before 3 months. We do not recommend tapeworm treatment before then.

Symptoms: Poor appetite and disturbed digestion. Restlessness. Lusterless coat and eyes. Scaly skin. In severe cases, there may be diarrhea, cramps and nervousness that seems almost like a fit.

The best evidence is to see the actual segments of the worms. They look like brownish grains of rice when dry and have a pinkish color when fresh. You may see them in the dog's bed-

ding or stool sticking to the hair of his hindquarters. You may see the segments before noticing the symptoms.

Treatment: Use *Sergeant's Tapeworm Medicine*. See directions on package.

Tapeworm eggs or larvae are carried by fleas and lice. As a preventive measure, keep your dog free of fleas and lice with *Sergeant's Sentry Collar, Flea and Tick Spray or Flea and Tick Powder*.

WHIPWORMS. These parasites do not always produce clear-cut symptoms. The stool may be soft in one passage and firm in the next. There may be cramping.

HEARTWORMS. These worms live in the dog's heart. The larvae are carried by mosquitoes, fleas and ticks. Commonest symptom is rapid fatigue.

Whipworm and heartworm must be treated by a veterinarian.



Scratching and skin troubles

SCRATCHING

FUNGUS. Your dog's scratching may not all be caused by fleas, ticks or lice. Research has found that a lot of this trouble starts with itching fungus.

The fungus may come from contact with weeds, grass or shrubbery when your dog plays outdoors. The fungus spores enter his skin through old flea bites and irritate him. He seeks relief by scratching. This condition is bothersome to your pet and to you.

Sergeant's Flea and Tick Powder relieves your dog of the fiery itching of this fungus infection. The powder contains a new "anti-scratch" ingredient which checks the fungi.



FLEAS. Nearly all dogs and puppies have fleas at some time during the year. You can see fleas on a dog quite easily—hopping about or on the inside of the thighs and on the abdomen. *Sergeant's* offers a choice of three different methods to eliminate both fleas and ticks: the old established Flea and Tick Powder, the convenience of the Flea and Tick aerosol spray and the newest and most modern *Sentry Collar*.

At the first sign of fleas get *Sergeant's Sentry Dog Collar*, a narrow plastic collar worn next to your dog's regular collar. It kills fleas all over your dog for three months, killing all new fleas that may get onto your dog. *Sentry Dog Collar* permeates every hair on your dog and even kills fleas in his bed.

Regular use of *Sergeant's Flea and Tick Powder* will keep your dog free of fleas. And remember that fleas are worse during the summer. A dog can pick up new fleas anywhere.

Sergeant's Flea and Tick Spray (aerosol) contains an exclusive formula in an easy-to-use, modern package. Kills fleas fast, checks scratching, repels flying insects, and lanolizes pet's coat.

Flea eggs fall from the dog's coat and hatch in his bedding or in cracks in the floor. They mature in from two to five weeks.

Wash his sleeping quarters with a suitable disinfectant. It will help to keep the fleas down.

For your dog to stay flea-free, it is important that he should be kept clean.



LICE. Lice are greater disease carriers than fleas although not as common and harder to diagnose. Examine the dog under a

strong light. Lice are small but their nits (or eggs) are easier to see glued to the hair.

Use *Sergeant's Flea and Tick Powder* daily for 3 days. Then the powder will be on the dog, waiting for new lice to hatch from the nits. Be sure to dust *Sergeant's Flea and Tick Powder* in his sleeping area.



TICKS. Ticks are not only a nuisance to dogs and their owners, but they are a menace. Several ticks, including the American Dog Tick (often called the "wood tick"), are carriers of Rocky Mountain Spotted Fever and other diseases. Ticks in some sections are becoming a disgusting nuisance in homes. This is a further reason for eliminating them from all dogs.

Ticks pass through three stages: The small, six-legged seed ticks. Larger eight-legged nymphs. And finally, the largest adult stage. Only the adult females become engorged (swollen) with the dog's blood.

Both *Sergeant's Flea and Tick Powder* and *Flea and Tick Spray* (aerosol) contain special combinations of ingredients. They will rid your dog of both the American Dog Tick and the Brown Dog Tick quickly and easily. They even kill the large swollen ticks.

Sergeant's Skip-Bath and *Flea and Tick Powder* are also helpful in killing ticks and will keep them off for up to a week.

Sergeant's Sentry Dog Collar also aids in tick control, especially in the neck area. It controls ticks for eight weeks.

SKIN TROUBLES

"SUMMER ECZEMA." So called "summer eczema" is a condition of itching skin which makes the dog scratch. Patches may appear in the dog's coat. The hair may fall out. The dog spreads the irritation and makes it worse by scratching and biting. Fleas and lice help spread it, too.

This itching of the skin may be due to many causes. Dirtiness, digestive upset, constipation, dampness and hot weather

are among causes. However, most "summer eczema" starts with external infections which can be prevented and cured.

Treatment. *Sergeant's No Itch* has proved highly effective in relieving the itching, burning and soreness of so-called "summer eczema." It is non-greasy and has a pleasing odor. You'll find it easy to apply.

Don't wait until painful, unsightly spots appear. If there is no sign of fleas or lice, start treating with *No Itch* as soon as you see your dog scratching. It may well save him a lot of unnecessary misery.

MANGE. Two forms of mange are found among dogs: Sarcoptic and Follicular. Sarcoptic Mange is the more common. It nearly always starts first around the face, neck or shoulders. It can take the form of red pustular spots or dry scaly ones. Itching is intense.

Sarcoptic Mange is caused by parasitic mites and is contagious. So keep your dog away from other dogs showing abnormal skin spots.

Treatment. Use *Sergeant's Sarcoptic Mange Medicine* as directed.

Keep your dog's sleeping quarters clean. Wash such accessories as his collar, comb and brush in a solution of a suitable disinfectant.

If your dog does not respond to treatment within ten days, consult a veterinarian. He may have Follicular Mange.

Follicular Mange. Another parasitic mite causes this disease. They burrow deeply into the skin.

Commonly known as Red Mange, the disease develops gradually. Bare round spots show around the face, legs or body. Then small hard blisters like pimples appear.

As the disease advances, the dog's hair drops out. His skin thickens, dries and cracks. It acquires a strong offensive smell. Itching is not as severe as in Sarcoptic Mange, but the dog licks himself a great deal.

The depth of the mites' channels under the skin makes Follicular Mange difficult to treat. A veterinarian can make a positive diagnosis and recommend treatment.



Virus diseases

THE DISTEMPER COMPLEX. Of all the diseases dogs can get, those included in the "distemper complex" are the most dangerous.

Often called the "great scourge of dogdom," true distemper is only one of many virus diseases in this group.

However, the symptoms for all of them are similar. Their prevention and treatment are basically the same.

Few unvaccinated dogs reach one year of age without having had at least a mild case of distemper. It is most common at about seven months.

Healthy dogs get distemper as well as unhealthy ones. However, we know that puppies in the best of health have a better chance than puppies that are sick, ill-fed, cold or dirty.

Anemic, my or rickety puppies may not survive an attack of distemper. Be sure your puppy is properly fed and kept free of worms from the moment you bring him home.

Immunization is not 100% effective, because of the variety of "distemper" viruses. But be sure to consult a veterinarian, and have your puppy vaccinated. There's a very good chance that it will save him from serious trouble.

KEEP YOUR DOG OUT OF INFECTED QUARTERS. Distemper and the related diseases are highly contagious. They are spread directly via the breath and excretions. But there is also some danger of a dog's becoming infected from the place where a sick dog lived.

We do not know how long the virus can live outside the dog. So keep your puppy home and away from other dogs, at least until he has been safely vaccinated.

Symptoms. The following symptoms are common to all the diseases of the distemper complex: Fever. Shivering. Listlessness. Vomiting. Loss of appetite. Fits. Running eyes and nose. Cough. Diarrhea.

Unfortunately, these symptoms are also found with severe worm infestations. So it is often impossible to make a correct diagnosis in the early stages.

Treatment. Treatment of distemper is simply treatment of the symptoms. If his eyes run, treat his eyes. If he has diarrhea, treat the diarrhea. If he vomits or coughs, treat these symptoms.

When your dog gets sick he gets depressed. The pulse is retarded. The whole system becomes sluggish and the patient is likely to give up. Veterinary hospitals offer the best in medical treatment, however, there is no substitute for a dog's home and master. During a depressive disease, your dog needs you. He needs the comfort, cheerfulness and peace of mind you alone can give him. Careful nursing is very important.

At home your dog can be kidded out of his depression. Frequent kind words, a back rub and pats on the head by someone he loves and trusts make all the difference in the world.

Food is important. You can often coax him to eat when someone else would fail. You should try all kinds of tricks to make him eat, to give him strength.

Very often a sick dog will refuse food altogether. If he does, feed him by hand. If he won't eat meat, try milk, soft-boiled eggs, fish or cereals, or prepared dog food. And give him

vitamins—*Sergeant's Vitapet Tablets* or *Vitapet Powder*.

Feed him anything that's nourishing. If he refuses everything, he must be force-fed. This is done with liquids. You may feed him broths, beef extracts, fruit juice, or milk. As a stimulant, give coffee or whisky with water.

Force-feed liquids as you would feed liquid medicines. See instructions below. Give the dog a chance to swallow after every teaspoonful.

Keep your patient warm. Warmth is one of the most important things to consider. The sick dog must be kept out of drafts all the time. Do not exercise him or allow him too much freedom. He should not be let out of the house unless he refuses to relieve himself on papers in the house.

If you have to take a sick dog out, be sure to keep him outside only long enough to attend to his functions. If the weather is chilly, put a coat on him. Make sure it's a coat that covers his chest, not just his back. In really cold weather, you should keep a coat or flannel cloth over him at all times. Add an extra one at night if the house gets cold.

AFTER-EFFECTS OF VIRUS DISEASES. Some of these viruses invade the dog's brain and produce an inflammation (encephalitis). If your dog is recovering from a virus disease, watch him carefully. He may develop chorea, or "St. Vitus' Dance." This comes from damage done to the brain by the virus. Although chorea is considered incurable, recent work with new drugs shows promise.

There are many different symptoms: Convulsions. Twitches. Blindness. Sleeping sickness. Loss of balance. A tendency to walk in circles, always in the same direction.

The extent of the damage determines the dog's chances of recovery. Don't destroy him until you see what course he will take. Perhaps after the inflammation has gone, the symptoms will decrease. Perhaps he'll outgrow a twitch.

Too often, dog owners give up when their dogs are suffering because it is commonly believed there is no hope. As long as there is life, there is hope—that's our stand. Don't underestimate the part that human affection and time plays in all dog illnesses.

INFECTIOUS HEPATITIS. This virus disease is transmitted in the urine of infected dogs or healthy carriers. It is hard to tell this disease from distemper.

Symptoms are very similar; the chief difference is that the appetite remains good in hepatitis. In distemper, loss of appetite is a symptom.

A veterinarian can use a combination distemper-hepatitis vaccine to help protect your dog against both diseases.

HOW TO GIVE MEDICINES

Your dog must be made to take medicines, and there is a right way to do it. Always follow medicine directions carefully. Never let a clumsy or careless person give medicine.

Lift your dog onto a table. Most dogs are more docile in this position. Or else back him into a corner and have someone hold him lightly between his knees.



To give capsules and tablets. First grasp the dog's upper jaw with your left hand, pressing his cheeks inward to cover the teeth. He will not close his mouth as long as he is held like this.

Hold the capsule between the thumb and first finger of your right hand. Push it as far back into the dog's mouth as you can. Close his mouth with both hands and stroke his throat gently to make him swallow.

Never allow the capsule to break.

To give liquid medicines. Pull out the dog's lower lip to form a pocket. Pour the liquid from a spoon into this pocket.

Keep the dog's head slightly raised, and stroke his throat to encourage swallowing.



Vomiting

Dogs are smart and they're civilized. They act in movies, they even wear rhinestone collars and mink coats. But when it comes to eating, they are notoriously D-U-M-B (we spell it for fear the dogs will hear).

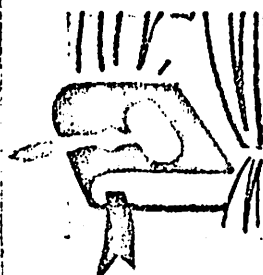
They don't even have common sense about what they eat. They'll nibble at anything and everything that comes their way. If it's poisonous or just plain inedible, why, all the better!

Puppies are even worse than their elders. When you see some of the things old and quite respectable dogs eat, this sounds incredible. But that's the way dogs are. You just have to live with it.

Naturally this lets them in for all sorts of stomach upsets. Many of these upsets are minor. If your dog eats something that doesn't agree with him (and he will, for sure), he will vomit and that's all there is to it. He may vomit after drinking water or after violent exercise following a meal.

Traveling too much may upset his stomach, too. A mild sedative as prescribed by a veterinarian may be helpful before starting a long trip.

If a dog vomits once or twice but seems to feel all right otherwise, don't worry about it. But if he continues to vomit, look for the trouble.



Senator Vest's tribute to a dog

Senator Vest, of Missouri, was urged by the attorneys in a dog case to help them. Voluminous evidence was introduced to show that the defendant had shot the dog in malice, while the other evidence went to show that the dog had attacked the defendant. Urged to speak, Vest arose, scanned the face of each jurymen for a moment, and said:

"Gentlemen of the Jury: The best friend a man has in the world may turn against him and become his enemy. His son or daughter that he has reared with loving care may prove ungrateful. Those who are nearest and dearest to us, those whom we trust with our happiness and our good name, may become traitors to their faith. The money that a man has he may lose. It flies away from him, perhaps, when he needs it most. A man's reputation may be sacrificed in a moment of ill-considered action. The people who are prone to fall on their knees to do us honor when success is with us may be the first to throw the stone of malice when failure settles its clouds upon our heads.

"The one absolutely unselfish friend that man can have in this selfish world, the one that never deserts him, the one that never proves ungrateful or treacherous, is his dog. A man's dog stands by him in prosperity and poverty, in health and sickness. He will sleep on the cold ground, when the wintry winds blow

and the snow drives fiercely, if only he may be near his master's side. He will kiss the hand that has flogged to of he will lick the wounds and sores that come in encounter with the roughness of the world. He guards the sleep of his pauper master, as if he were a prince. When all other friends desert, he remains. When riches take wings and reputation falls to pieces, he is as constant in his love as the sun in its journey through the heavens.

"If fortune drives the master forth an outcast in the world, friendless and homeless, the faithful dog asks no higher privilege than that of accompanying him, to guard against danger, to fight his enemies; and when the last scene of all comes, and death takes the master in its embrace, and his body is laid away in the cold ground, no matter if all other friends pursue their way, there by the graveside will the noble dog be found, his head between his paws, his eyes sad, but open in watchfulness, faithful and true even in death."

Senator Vest sat down. He had spoken in a low voice, without any gesture. When he finished, judge and jury were wiping their eyes. The jury returned a verdict in favor of the plaintiff for \$500. He had sued for \$200.

But cats generally don't need much training. They are among the most of animals. They seem less emotional than dogs and need less restraint. And they are almost always polite. Cats live and let live. They graciously accept food and shelter, repaying you with their dignified presence.

These qualities of self-reliance, independence and decorative dignity appeal to many people. Many others prefer the affection and warm companionship that a dog can give. It's all a matter of personality and taste. In spite of the traditional enmity between dogs and cats, they often live together very happily.

Cats dislike any liquid medicine, so it is better to give them tablets or capsules.

You may give a cat *Sergeant's Vitapet Tablets* or *Vitapet Powder*, one dose per day.

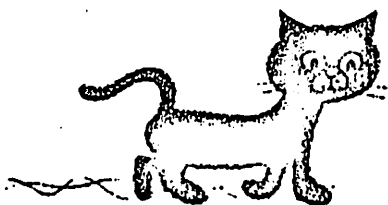
To eliminate large roundworms (ascarids) or hookworms, give *Sergeant's Puppy Capsules*.

Sergeant's Tapeworm Medicine, *F-Z Groom*, *Dry Cleaner*, *Eye Ointment*, *No Itch*, *Cough Medicine*, and *Laxative Tablets* are suitable for cats.

Sergeant's Flea and Tick Powder and *Skip-Bath* are NOT suitable for cats.

Sergeant's Sentry Cat Collar is the most modern up-to-date flea killer for cats. It kills fleas all over your cat and keeps them off for three full months. Just buckle it on and fleas are gone.

Sergeant's Cat Flea Powder and *Cat Flea Spray* are also effective products developed especially for killing fleas on cats.



They kill fleas quickly and provide long-lasting effectiveness against reinfestation.

EAR MITE OF CAT. This tiny parasite is often found in one or both ears of the cat. It can be seen in the ear canal where it causes intense itching and shaking of the head. It does not wander from the ears.

Treatment. Clean the ear with a cotton swab dipped in olive or mineral oil. After cleaning, insert down in the ear several drops of *Sergeant's Ear Creme*. Place small piece of cotton in ear for a few minutes to take up any excess. Repeat treatment daily. For a swollen ear flap, consult a veterinarian, as surgery is the only cure.

If you use *Sergeant's Sarcoptic Mange Medicine* on a cat, dilute it with 4 or 5 parts of olive oil. Apply only once a day to about one-quarter of the affected area at one time.

Sergeant's Cat Flea Powder, an effective product developed especially for cats, is particularly recommended. It should also be sprinkled on the cat's sleeping quarters.

CAT PLAGUE. Infectious gastroenteritis (often called "cat plague," "cat distemper" or "infectious enteritis") is an acute, infectious and highly contagious disease among cats.

The symptoms are listlessness, high temperature, vomiting, inconstant diarrhea, and complete lack of appetite for either solids or liquids.

The mortality is high and death often occurs in from 24 to 48 hours after the first symptoms appear.

In the early stages of the disease, a veterinarian can give antibiotics and serum. This often can save the cat's life. Cats can be immunized against the disease by use of vaccine. If an outbreak occurs, consult a veterinarian immediately.



A few hours before whelping she will act restless. She may whimper a moan or cry a little. She will pick out a place of her own for the whelping . . . let her do it. Don't try to move her into some spot you may think would be more suitable. When she finds her spot, leave her alone. Just hope it isn't under your bed or in your closet among the shoes.

Whelping may take as little as half an hour or as long as fourteen hours. If your dog seems to be in trouble after four or five hours of pain with no result, call a veterinarian.

After whelping, clean the mother up and give her a clean bed. She'll be able to take care of herself and her puppies from then on.

CARE OF YOUNG PUPPIES. The mother will do most of the work of raising her puppies. That is, she will look after them until they are about six weeks old. From there on, she washes her paws of them and leaves them on their own.

Your share of the responsibility is covered in these few instructions:

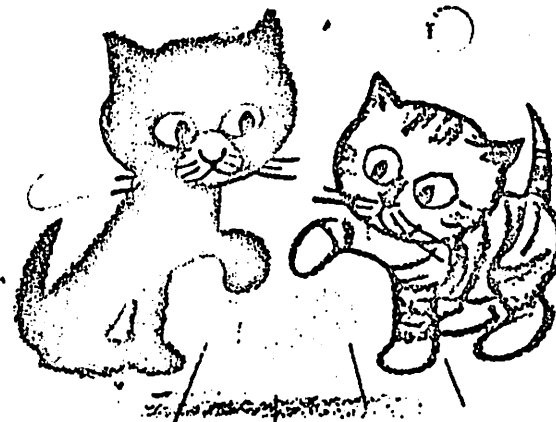
See that the mother's nipples are not clogged. Pinch them and massage them if they are.

See that each puppy nurses. Don't let the weak ones get pushed out of the way by the stronger ones.

When puppies are three or four weeks old, begin feeding them. Use the following mixture—a quarter or half teaspoonful of scraped raw beef; scalded, but not boiled, milk; beaten egg yolk; and *Sergeant's Vitapet Powder* mixed in with them. (See chapter on Feeding.)

If the puppies' eyelids are inflamed, wash them twice a day with *Sergeant's Eye Ointment*. Puppies' eyes open ten days or two weeks after birth.

Puppies should be weaned by the time they are six weeks old. Their diet is described in this booklet under Feeding. They can be wormed safely at this time with *Sergeant's Worm-Away*. Use *Sergeant's Flea and Tick Powder* to keep them free of fleas and lice.

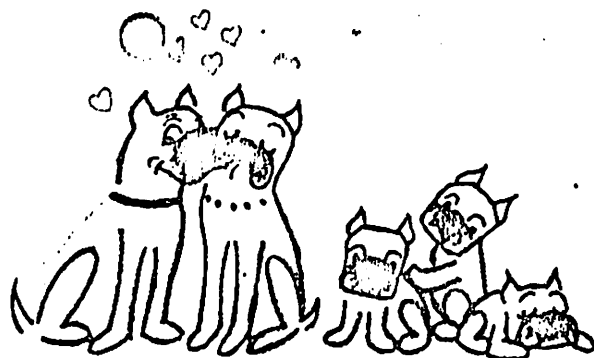


If family background is the measure, cats are the aristocrats of pets. They have been living with men just as they do now for thousands of years. Long before any modern breed of dog developed, cats purred in Egyptian temples, and strolled through the villas of Rome.

In all these centuries, the cat learned to manage by himself. He is much more independent than the dog. He demands less from his owner.

As a kitten he may be playful and companionable. As he grows up, though, he seems to sense the dignity of his ancient line and takes his proper position in the household.

It's hard to say just what that position is. Cats are practically untrainable, beyond housebreaking. They do as they see fit—usually not as you do.



Pregnant females and new-born puppies

If you have a female dog, the question of breeding her is bound to come up. You may or may not want puppies. If you do, and she's a pedigreed animal, be sure she mates with a good stud dog. You can get information on stud service from your dog's breeder or the person who sold her. Or you can get in touch with one of the many dog clubs.

Mating with a dog of a different or larger breed, or a mongrel, will in no way affect her future litters.

The average dog owner doesn't really want a litter of puppies. But mistakes will happen. A female dog can be made pregnant only during her heat periods. These come only twice a year, and last for two or three weeks. They begin when the young dog is from six to twelve months old.

During the heat period, you may have every gay young dog in your neighborhood on your doorstep, bringing candy and flowers. This crowd of stage-door Johnnies may get on your

nerves a bit, but remember it doesn't last too long.

If you don't want your dog to breed, keep her locked up during her periods. Or you can have her spayed. Spaying means the removal of her reproductive organs.

This is a permanent measure, so give it some thought. The operation is best done when she is between 5½ and 7 months old, before her first heat.

Pregnancy lasts from sixty to sixty-three days as a rule. The first sign is a swelling of the abdomen. This is first seen in the fourth, fifth or sixth week. Swelling of the breasts follows, usually in the seventh or eighth week.

Sometimes when the litter is only one or two puppies, there is no change in the mother's figure until three or four days before whelping, or giving birth.

THE MOTHER'S DIET. There should be no change in what the pregnant dog eats, only in how much. She should have more food towards the end of her confinement. Tonic pills will be valuable in building good rich blood. *Sergeant's Vitapet Tablets* or *Vitapet Powder* will help maintain proper vitamin balance.

A mother can transfer worms to her puppies before they are born or while she's nursing them. Give her *Sergeant's Sure Shot Capsules* (*Puppy Capsules*, for small breeds) before she is mated, or during her third or fourth week of pregnancy. Do not allow her to become infested. Keep her away from places where other dogs have defecated.

The mother should also be kept free of fleas. Use *Sergeant's Flea and Tick Powder* or *Sergeant's Skip-Bath*. If she becomes infested with fleas, her puppies may get tapeworms. Tapeworm eggs are carried by fleas and lice.

Constipation is something to look out for during the last weeks. Mix mineral oil in the dog's food. A day or two before whelping is due, give her two *Sergeant's Laxative Tablets* before breakfast. If she is one of the big breeds, give her four tablets.

WHELPING. As the big day approaches, keep the dog as clean as possible, without bathing her in a tub. Wash her nipples and abdomen with suds from *Skip-Flea Soap*. Sponge her with a rag dipped in warm water to which a little suitable disinfectant has been added.

above it until you've finished treatment. Rush the dog to a veterinarian.

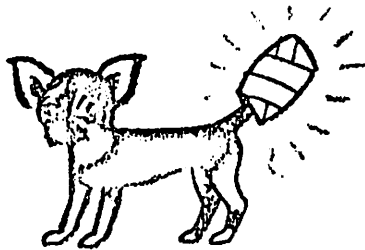
INSECT STINGS AND BITES. Apply a heavy paste of bicarbonate of soda or plain starch, or a weak solution of ammonia.

SPRAINS—STIFF, SORE MUSCLES. Give the dog a warm bath, dry him well, keep him in a warm place, and rub him thoroughly with alcohol, massaging gently but firmly the parts affected.

If the dog is in great pain, give one-quarter to two aspirin tablets, depending on his size. Feed him lightly. A little salt in the dog's food will make him want to drink more water. That will keep kidneys and bowels active.

CUTS. If the cut is mild, wash it off with a suitable disinfectant. If the cut is deep, put a packing of cotton and gauze on it, saturate it with a suitable disinfectant. Bandage it up tightly but not tight enough to stop circulation.

If the cut is deep and hemorrhaging, keep holding a heavy disinfected packing against it as tightly as you can. Do this until you can get the wound sutured, or until you can get your dog to a veterinarian.



INJURED TAIL. Treat bruises with a wet pack of Epsom salts solution. Fold a clean cloth or piece of gauze to make a pad. Dip it into the solution and apply to the injury. If the skin is broken, cleanse with a mild antiseptic. If the hair falls out as a result of the injury, rub the hair and skin with a healing salve.

INJURED AND SORE FEET. Lack of exercise sometimes causes a dog's feet to become soft and tender. An excessive amount of exercise, such as long hunting trips, may wear down his foot pads and leave his feet very sore.

Foot troubles may be relieved by a canvas boot or bandage, which protects the pads. Sometimes abscesses appear between a dog's toes. Eczema may break out between the pads, causing irritation.

To treat any of these conditions, soak the dog's feet for 10 minutes at a time once or twice a day in a solution of 1 part disinfectant in 10 parts of water. After drying the feet, apply a little *Sergeant's No Itch*.

FOREIGN OBJECTS IN STOMACH. Give the dog a large meal of something soft—bread is a good thing. Then make him vomit. If the object fails to come up, wait a few minutes and try again.

If you fail a second time, give him from one to three table-spoonsful of mineral oil, depending on the size of the dog. If he is still in pain after this treatment, take him to a veterinarian. There is very little the amateur can safely do about foreign objects once the first-aid stage is passed.



It can be worms. It can mean distemper. It can mean constipation or improper diet or indigestion. It may be a foreign object in the stomach or intestines. And it can mean poison.

You must always try to get to the cause of the symptoms. Be sure to reread the sections of this booklet on Distemper and Worms.

What To Do For Vomiting. The treatment depends, of course, on the cause. But in any case, the first thing to do is take the dog off food for twenty-four hours so his stomach can rest. Don't even give him water, just a little cracked ice now and then.

On the second day, give him a little chopped meat. If this does not stay down, try diluted dextrose or corn syrup.

Give him one or two teaspoonsful every hour. Follow with Elixir Lactated Pepsin (liquid). Get this at any drugstore; it will aid the dog's digestion and settle his stomach.

After a day or two of this treatment, your pet should be feeling better. But if he is still vomiting, get professional help at once, especially if there is blood in the vomitus or if it is black or dark brownish green.



Poisonings and accidents

TREATMENT FOR POISONING. If your dog has swallowed poison, immediate action is imperative. After poison has been absorbed or corroded the stomach and intestines, the opportunity for first aid has passed. First aid consists of emptying the stomach and then giving a physic and an antidote. (see below)

HOW TO CAUSE VOMITING. Any of the following household emetics can be used: One to four ounces of a strong salt. Mustard solution. A mixture of half peroxide and half water. Administer as you would liquid medicines. If you can't make the dog swallow, put two tablespoonsful of salt on the back of his tongue and close his mouth.

ANTIDOTES FOR COMMON POISONS

Poison	Source	Antidote
Garbage, spoiled food	Garbage cans	Peroxide followed by Epsom salts physic and enema
Lead	Arsenate of lead or paint	Epsom salts followed by liberal feeding of milk
Arsenic	Spray materials	Epsom salts
Phosphorus	Rat poison	Peroxide
Mercury	Mercury bichloride	Egg white, milk
Thallium	Bug poison	Table salt
Acids	Batteries, hydrochloric acid, etc.	Bicarbonate of soda
Alkali	Drain cleaners, etc.	Vinegar

SNAKE BITES. Fast action is needed in dealing with bites from poisonous snakes. Cut in and around the swelling and try to press the poison out as quickly as possible. Put a suitable disinfectant in the openings, or use peroxide or potassium permanganate. If the bite is on the leg, put a tourniquet

PENGAD - Bayonne, N.J.
**DEFENDANT'S
EXHIBIT**
 2
RLW

(Date) _____

ADMITTED INTANGIBLE PERSONAL PROPERTY AND INCOME

40 M. 20%

YEAR OMITTED	SUBJECT OF TAXATION ASSESSED	VALUE			TAXES			PENALTIES		TAXES AND PENALTIES			INTEREST		TOTAL TAXES PENALTIES AND INTEREST		
1971	Field Audit	\$35	440	—	\$	1772	—	\$		\$			\$354	40	\$2	126	40
	Interest																
to	8-15-75																
from	4-15-72																

COMMONWEALTH OF VIRGINIA
CORPORATION INCOME TAX RETURN
FOR CALENDAR YEAR 1971

1971
48154 APR 17 72

OR FISCAL YEAR BEGINNING 1971 AND ENDING 1972

File this return with the Department of Taxation, P. O. Box 6-L, Richmond, Virginia 23215, on or before April 15, 1972, if a calendar year return; or on or before the fifteenth day of the fourth month following the close of the fiscal year, if a fiscal year return. Checks should be made payable to the State Tax Commissioner.

Name MILLER - MORTON COMPANY	Employer Identification No. 54-0343240
Number and street 2007 NORTH HAMILTON STREET	Line 28 is for use by a corporation transacting or conducting part of its business within and part without this State. A corporation to which Line 28 is applicable must fill in and attach Schedule M (printed separately).
City or town, State, and ZIP code RICHMOND, VIRGINIA 23230	
Date incorporated 3-1-19 State or country VIRGINIA	
Principal business activity MFG. OF DOG CARE PRODUCTS	

IMPORTANT—All applicable lines and schedules of this form must be filled in. Where additional space is needed for schedules, attachments must conform to the official form and totals must be entered in the form schedules.

GROSS INCOME	1. Gross receipts or gross sales 21790678	Less: Returns and allowances 405780	21384898
	2. Less: Cost of goods sold (Schedule A) and/or operations (Schedule B) SCHEDULE 1		8646611
	3. Gross profit		12738287
	4. Dividends taxable (From Schedule C)		
	5. Interest		28552
	6. Rents		
	7. Royalties		
	8. Net gain (or loss) from sale or exchange of real or personal property (From Schedule D)		
	9. Other income (Attach schedule) SCHEDULE 2		5018
	10. Total income in Lines 3 through 9		12771857.00
DEDUCTIONS	11. Compensation of officers (From Schedule E) SCHEDULE 3		198820
	12. Salaries and wages (not deducted elsewhere)		1417682
	13. Repairs (Do not include cost of improvements or capital expenditures)		16870
	14. Bad debts (From Schedule F)		30881
	15. Rent		
	16. Taxes (From Schedule G)		171366
	17. Interest		97400
	18. Contributions or gifts paid (From Schedule H)		4345
	19. Losses by fire, storm, shipwreck, or other casualty, or theft (Attach schedule)		
	20. Amortization (Attach schedule)		
	21. Depreciation (From Schedule I) SCHEDULE 6		97623
	22. Depletion (Attach schedule)		
	23. Advertising SCHEDULE 7		4183703
	24. Amounts contributed under a pension, annuity, stock bonus, or profit-sharing plan, etc.		67417
	25. Other deductions authorized by law (From Schedule J) SCHEDULE 8		2717822
	26. Total deductions in Lines 11 through 25		9003929.00
	27. Net income (Line 10 less Line 26)		3767928.00
28. Income subject to Virginia tax, if Schedule M is applicable (From Line 15, Schedule M) M		2170327.00	
TAX	29. Amount of Virginia tax (5% of Line 27 or Line 28, whichever is applicable)		108516.60
	30. Credits: (a) Payments of 1971 estimated Virginia income tax 71800.00		71800.00
	(b) Other credits (Attach schedule)		36716.00
	31. TAX DUE AND PAYABLE (Line 29 less Line 30) (Attach separate remittance for this amount)		
	32. OVERPAYMENT (Line 30 less Line 29)		
33. Amount in Line 32 desired to be: (a) Credited to 1972 estimated tax (b) Refunded			

DECLARATION (See Instruction E)

I, the undersigned president, vice-president, treasurer, assistant treasurer, chief accounting officer, or other officer duly authorized to act, of the corporation for which this return is made, declare under the penalties provided by law that this return (including any accompanying schedules and statements) has been examined by me and is, to the best of my knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the income tax laws of the Commonwealth of Virginia. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.



3/15/72
(Date)

A. M. PULLEN & COMPANY

(Signature of Officer)

Treasurer
(Title)

MAR 13 1972
(Date)

CERTIFIED PUBLIC ACCOUNTANTS

145A-

(Address)

Schedule A.—COST OF GOODS SOLD (See Instruction 2)
(Where inventories are an income-determining factor)

Schedule B.—COST OF OPERATIONS
(Where inventories are not an income-determining factor)

Page 2

Inventory at beginning of year		Salaries and wages	
Merchandise bought for manufacture or sale		Other costs (to be detailed):	
Salaries and wages		(a)	
Other costs (Attach schedule)		(b)	
Total		(c)	
Less: Inventory at end of year		(d)	
Cost of goods sold (Enter as Line 2, page 1)		(e)	
		Total (Enter as Line 2, page 1)	

Schedule C.—INCOME FROM DIVIDENDS (See Instruction 4)

1. Name of declaring corporation	2. Full amount of dividends received	3. Deductible dividends received	4. Non-deductible dividends received
Total (Enter as Line 4, page 1)			

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF REAL ESTATE AND STOCKS, BONDS, AND OTHER PERSONAL PROPERTY (See Instruction 8)

1. Description of property	2. Date acquired Mo. Day Year	3. Date sold Mo. Day Year	4. Gross sales price (Contract price)	5. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (Furnish details)	6. Cost or other basis and cost of improvements subsequent to acquisition or March 1, 1913	7. Expense of sale
Totals						
Total net gain (or loss) (Column 4 plus 5 minus the sum of Columns 6 and 7). Enter as Line 8, page 1						
State with respect to each item of property reported in Schedule D how property was acquired						

Schedule E.—COMPENSATION OF OFFICERS

1. Name and address of officer	2. Official title	3. Time devoted to business	Per cent of corporation's stock owned		6. Amount of compensation
			4. Common	5. Preferred	
Total compensation of officers (Enter as Line 11, page 1)					

Schedule F.—BAD DEBTS (See Instruction 14)

1. Taxable year	2. Net income reported	3. Sales on account	4. Bad debts of corporation if no reserve is carried on books	If corporation carries a reserve—	
				5. Gross amount added to reserve	6. Amount charged against reserve
1968					
1969					
1970					
1971					

Schedule G.—TAXES (See Instruction 16)

Nature	Amount
Total (Enter as Line 16, page 1)	

Taxes, by whatever authority imposed, which are not deductible under the Virginia Income Tax Law, and which must not be deducted anywhere on this return are as follows: Income taxes, inheritance taxes, and taxes assessed for local benefits of a kind tending to increase the value of the property assessed. Do not Deduct Non-Deductible Taxes.

Schedule H.—CONTRIBUTIONS OR GIFTS PAID (See Instruction 18)

Name and address of organization	Amount
Total (Enter as Line 18, page 1, subject to 5 per cent limitation) (See Instruction 18)	

Schedule I.—DEPRECIATION (See Instruction 21)[illegible]**Schedule J.—OTHER DEDUCTIONS (See Instruction 25)**

1. If a foreign corporation, enter date of certificate of authority to do business in Virginia and number of places of business in Virginia.
Date: _____; Number of places _____
2. If this is the corporation's first return, indicate whether (a) completely new business ☐, or (b) successor to previously existing business, which was organized as (1) corporation ☐, (2) partnership ☐, or (3) sole proprietorship ☐, or (4) other (indicate) _____.
If successor to previously existing business, give name and address of the previous business organization: _____
3. The corporation's books are in care of CORPORATION
Located at RICHMOND, VIRGINIA
4. Check if the corporation is a farmers' marketing or a farmers' purchasing cooperative association ☐, a consumers' cooperative association ☐, or other cooperative association ☐.
5. Is this a consolidated return? NO Did the corporation file a consolidated return for the preceding taxable year? NO
6. Does the corporation own 80 per cent or more of the outstanding voting capital stock of another corporation or of other corporations?
YES
7. Is over 80 per cent of your outstanding voting capital stock owned by another corporation? YES
8. Is 80 per cent or over of your outstanding voting capital stock as well as 80 per cent or over of the outstanding voting capital stock of another corporation or of other corporations owned or controlled by the same interests? YES

9. If the answer to questions 6, 7, and 8, or to any of them, is "yes" attach to this return a statement giving the name of the parent or principal company and the names of the affiliated companies, the address of each, the date of incorporation of each, the State in which incorporated, and the nature of the business of each. Corporations making consolidated returns will be required by the Department of Taxation to furnish such additional information as may be necessary for the proper enforcement of the law.
10. Was this return prepared on the accrual ☒ or cash ☐ basis?
11. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market whichever is lower C or M. If other basis is used, explain fully in separate statement, giving date inventory was last reconciled with stock (see Specific Instruction 2).
12. Did the corporation file with the Virginia Department of Taxation wage and tax statements (Forms Va.-2) and, if applicable, income information returns (Forms Va.-1099 and Va.-1099A) for the calendar year 1971? YES
13. Did Federal tax authorities, in 1971, adjust the net income of the corporation, for Federal tax purposes, for any year or years prior to 1971? Yes ☐ No ☒. If "yes," attach statement of adjustments for each year examined.
14. If the corporation is a Virginia corporation, is it licensed to do business (domesticated) in any other State or States? Yes ☒ No ☐. If answer is "yes," give name of each such other State and date on which the corporation was licensed to do business therein.

Schedule K.—BALANCE SHEETS (See Instruction I)

Page 4

ASSETS	Beginning of taxable year		End of taxable year	
	(A) Amount	(B) Total	(C) Amount	(D) Total
1. Cash				
2. Notes and accounts receivable				
Less: Reserve for bad debts				
3. Inventories				
4. Govt. obligations: (a) U. S. and instrumentalities;				
(b) State, subdivisions thereof, etc.				
5. Other current assets (Attach schedule)				
6. Loans to stockholders				
7. Mortgage and real estate loans				
8. Other investments (Attach schedule)				
9. Buildings and other fixed depreciable assets				
(a) Less: Accumulated depreciation				
10. Depletable assets				
(a) Less: Accumulated depletion				
11. Land (net of any amortization)				
12. Intangible assets (amortizable only)				
(a) Less: Accumulated amortization				
13. Other assets (Attach schedule)				
14. Total assets				
LIABILITIES AND CAPITAL				
15. Accounts payable				
16. Bonds, notes, and mortgages payable (maturing less than one year from date of balance sheet)				
17. Other current liabilities (Attach schedule)				
18. Loans from stockholders				
19. Bonds, notes, and mortgages payable (maturing one year or more from date of balance sheet)				
20. Other liabilities (Attach schedule)				
21. Capital stock: (a) Preferred stock				
(b) Common stock				
22. Paid-in or capital surplus				
23. Surplus reserves (Attach schedule)				
24. Earned surplus and undivided profits				
25. Less cost of treasury stock				
26. Total liabilities and capital				

(Schedule)

Schedule L.—RECONCILIATION OF NET INCOME AND ANALYSIS OF EARNED SURPLUS AND UNDIVIDED PROFITS

1. Earned surplus and undivided profits at end of preceding taxable year (Schedule K)	8203476	9. Total distributions to stockholders charged to earned surplus during the taxable year:	
2. Net income (Line 27, page 1)	3767928	(a) Cash	
3. Non-taxable interest on:		(b) Stock of the corporation	
(a) Obligations of the U. S., Va., or political subdivisions of Va.		(c) Other property	
(b) Interest on securities issued under the Federal Farm Loan Act		10. Contributions in excess of 5% limitation	
4. Other non-taxable income (Attach schedule)		11. Federal income and excess profits taxes	1278981 #
5. Charges against surplus reserves deducted from income in the return (Attach schedule)		12. State and local income taxes	156366
6. Adjustments for tax purposes not recorded on books (Attach schedule)		13. Other non-deductible taxes	
7. Sundry credits to earned surplus (Attach schedule)		14. Insurance premiums paid on the life of any officer or employee where the corporation is directly or indirectly a beneficiary	
8. Total of lines 1 through 7	11971404	15. Unallowable interest incurred to purchase or carry tax-exempt interest obligations and other unallowable interest	
* Liquidation of subsidiary		16. Additions to surplus reserves (Attach schedule)	
# The Company files consolidated returns with its parent company		17. Other unallowable deductions (Attach schedule)	
		18. Adjustments for tax purposes not recorded on books (Attach schedule)	105
		19. Sundry debits to earned surplus (Attach schedule)	1680198 *
		20. Earned surplus and undivided profits at end of taxable year (Schedule K)	8855754

1971

Schedule M of Form 500

CORPORATION TRANSACTING OR CONDUCTING PART OF BUSINESS WITHIN AND PART
WITHOUT VIRGINIA — ALLOCATION AND APPORTIONMENT OF INCOMEName of Corporation MILLER-MORTON COMPANY 54-0343240

A. Allocable income		1. Total amount of allocable income	2. Amount allocated to Virginia
1. a. Net rents and royalties from real property			
b. Net rents and royalties from tangible personal property			
2. a. Capital gains and losses from sales or other disposition of real property			
b. Capital gains and losses from sales or other disposition of tangible personal property			
c. Capital gains and losses from sales or other disposition of intangible personal property. (Do not include capital gains and losses from sales or other disposition of stock or other securities of a subsidiary corporation of the selling or disposing corporation; such gains and losses are not allocable but are apportionable)			
3. Interest and dividends. (Do not include interest and dividends derived from investments in a subsidiary corporation of the recipient corporation; such interest and dividends are not allocable but are apportionable)			
4. Totals (Enter total of Col. 1 in Line 11 and enter total of Col. 2 in Line 14)		NONE	NONE
B. Apportionable income factors		1. Total	2. In Virginia
5. PROPERTY FACTOR			
a. Average value of real estate and tangible personal property owned by or rented to corporation	7113753	4902097	
b. Column 2 divided by Column 1			68.9 %
6. PAYROLL FACTOR			
a. Total compensation paid or accrued, less compensation of general executive officers having company-wide authority, and less all compensation in connection with income allocated in A above. (Compensation to general executive officers having company-wide authority and all compensation in connection with income allocated in A above must be excluded from Columns 1 and 2)	2298589	1393469	
b. Column 2 divided by Column 1			60.6 %
7. SALES FACTOR			
a. All gross receipts of the corporation other than gross receipts from items of allocable income	21819488	9483708	
b. Column 2 divided by Column 1			43.4 %
8. Sum of Lines 5b, 6b, and 7b			172.9 %
9. Line 8 divided by the figure 3, or 3 reduced by the number of factors, if any, having no denominator			57.6 %
10. Total net income (From Line 27, page 1 of the return)			3767928
11. Less: Total amount of allocable income (From Line 4, Col. 1)			
12. Net income subject to apportionment (Line 10 less Line 11)			3767928
13. Income apportioned to Virginia (Line 12 multiplied by % in Line 9)			2170327
14. Income allocated to Virginia (From Line 4, Col. 2)			
15. Income subject to Virginia tax (Line 13 plus Line 14) (Enter in Line 28, page 1 of the return)			2170327

Miller-Motors Company
 Richmond, Virginia
 Tax Schedules

54-0343240

1971

Page 1

	Amount	Total
Cost of Goods Sold: (Schedule 1)		
Inventory of finished stock 1-1-71		3254386 00
Cost of finished stock produced and purchased:		
Materials used and purchased	6498141 00	
Salaries and wages	539092 06	
Supplies - operating and miscellaneous	14139 00	
Utilities	22388 00	
Miscellaneous	1804 00	
Insurance	29251 00	
Maintenance	44211 00	
Royalties	18600 00	
Pro rata warehouse charges	616539 00	
Pro rata transfer to administrative	40835 00	7744230 00
		10978616 00
Inventory of finished stock 12-31-71		3352065 00
Cost of Goods Sold		8646611 00
Other Income: (Schedule 2)		
Miscellaneous		5918 00

Miller-Morton Company
 Richmond, Virginia
 Tax Schedules
 1971

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Page 2

Compensation of officers: (Schedule 3)

Name and address	Title	Devoted to		Amount	Expense allowance
		Business	Stock owned		
D. F. Holmes, Jr. Richmond, Va.	Vice Pres.	all	none	37150 08	12 610 66
Randolph Tabb Richmond, Va.	Vice Pres.	all	none	36755 04	422 22
H. R. Rapp, Jr. Richmond, Va.	Vice Pres.	all	none	29375 00	-
P. K. Stewart Richmond, Va.	Vice Pres.	all	none	37275 16	8926 15
Stephen Reed Richmond, Va.	Vice Pres.	all	none	34881 59	11665 97
W. L. Flanagan Richmond, Va.	Treasurer	all	none	23483 36	503 58
				198820 23	

Miller-Morton Company
 Richmond, Virginia
 Tax Schedules
 1971

Page 3

	Amount	Total
Taxes: < Schedule 4 >		
Capital not otherwise taxed	7879 00	
State of Texas - franchise	2965 00	
Registrations of products	8867 00	
Personal property - City of Richmond	701 00	
Registrations fee	55 00	
State Board of Pharmacy	35 00	
Real estate	7611 00	
Machinery & Tools - City of Richmond	4261 00	
Payroll Taxes	97243 00	
Sales tax and miscellaneous	13973 00	
General operating taxes and other	27776 00	
Total Virginia Return	171366 00	
Virginia income Tax	108516 00	
Illinois income Tax	10472 00	
California franchise Tax	37378 00	327732 00

Miller-Morton Company
 Richmond, Virginia
 Tax Schedules

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1971

Page 4

	Amount	Total
Contributions: < Schedule 5 >		
United Negro College Fund	3600 00	
Virginia Foundation for Independent Colleges	400 00	
Richmond Area Heart Association	200 00	
Richmond Symphony	100 00	
Others < 2 >	45 00	4345 00
California Return:		
Carryover to 1971	287124 00	
allowable for 1971	188614 00	
Less: Contributions in 1971	4345 00	
Portion of carryover used in 1971		184269 00
		188614 00
Carryover to 1972	9851 0	

Miller-Morton Company

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Richmond, Virginia

Tax Schedules

1971

Page 5

Depreciation and amortization (Schedule G)	Estimated Life	Cost	Depreciation prior yrs	1971
Buildings	Various	888,172.09	257,620.84	35,339.92
Autos & trucks	4 yrs	47,385.6	39,488.0	5,265.3
Machinery & equipment	Various	378,294.86	181,394.09	42,637.29
Furniture & fixtures	Various	117,662.14	50,609.24	14,509.76
		1,388,867.65	493,572.97	93,013.50
Trademarks after 12/31/55	5 yrs	26,548.54	7,978.66	4,609.35
Subtotal		1,415,416.19	501,551.63	97,622.85
Trademarks - prior 1956		4,640.00	4,461.52	105.57
		1,420,056.19	506,013.15	97,728.22
Straight line method				
			29,050.00	
Declining balance method				
			63,964.00	93,014.00
Amortization of trademarks				
				4,714.00
				97,728.00
Charged to cost of goods sold (Sch 1)				
				67,370.00
Charged to other accounts				
				30,358.00
Total				97,728.00
Trademarks - Prior to 1956				
				105.00
Total - Federal Return				
				97,623.00

Miller-Morton Company
Richmond, Virginia
Tax Schedule

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1971

Page 1

	Amount	Total
Advertising Expenses: (Schedule 7)		
General salaries	19775.00	
Dues and subscriptions	1900.00	
Travel and entertainment	8365.00	
Miscellaneous	24180.00	
Insurance	482.00	
Direct mail - fit	4600	
Magazines and newspapers	919419.00	
Magazines and newspapers - preparation	80056.00	
Advertising - other	45223.00	
Public relations	9053.00	
Radio and television time	1537942.00	
Radio and television - preparation	82405.00	
Sales promotion miscellaneous	10534.00	
Direct mail - mailings	11041.00	
Direct mail - literature	177494.00	
Samples - fit and postage	484.00	
Samples - finished stock	29704.00	
Samples - fee	5011.00	
Coupon redemption	53380.00	
Sales promotions - other	45.00	
Promotional supplies	279985.00	
Promotional rack	191209.00	
Marketing incentive	512453.00	
Endorsements	27500.00	
Competitive pick-ups	156017.00	1183703.00

Wilder-Morton Company
Richmond, Virginia
Tax Schedules

54-0343240

1971

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	Amount	Total
Other Deductions: (Schedule 8)		
News and subscriptions	15,650.00	
Freight and Postage	19,422.00	
Insurance	108,452.00	
Professional services	66,387.00	
Supplies - office	65,452.00	
Travel and Entertainment	698,279.00	
Miscellaneous	251,969.00	
Private intercompany charges	107,786.00	
Equipment rental	31,740.00	
Utilities	84,535.00	
Private purchasing	58,420.00	
Private maintenance	34,993.00	
Personnel	78,400.00	
Outside services	214,529.00	
Consultant travel	11,986.00	
Package design	16,179.00	
Research and development	60,539.00	
Private expenses paid by Chicago Bird & Cage Company	(46,469.00)	
Movies	50,856.00	
Commissions	141,189.00	
Sales supplies and samples	55,578.00	
Sales promotions	13,270.00	
Freight out	701,818.00	2,717,822.00

Miller-Morton Company
Richmond, Virginia
Tax Schedules
1971

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Federal Return: Page 3, Item F(3)

A. H. Robins Company, Inc. 54-0486348

Richmond, Virginia 100%

Page 4, Schedule M-1, Item 5.

Amortization of Trademarks

Miller-Martin Company
 Richmond, Virginia
 Balance Sheet Schedules
 1971

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Line No	12-31-70	12-31-71
5 Other current assets:		
Advertising matter	251,198	47,965
Prepaid insurance	3,156	12,058
Other	366,296	300,823
	620,650	360,846
13 Other assets:		
Note receivable	-	158,677
Investments in subsidiaries	305,000	5,000
Investments	110,847	110,847
Due from subsidiaries	246,529	501,230
Due from parent	-	145,022
	682,376	826,776
17 Other current liabilities:		
Accrued miscellaneous expenses	73,021	246,457
Due to affiliate	151,799	278,045
Accrued taxes - other than income	4,913	1,722
Due to parent	251,673	
Income taxes payable		47,885
	410,526	997,109

BALANCE SHEET

	Beginning of Taxable Year		End of Taxable Year	
	(A) Amount	(B) Total	(C) Amount	(D) Total
ASSETS				
Cash		672945		208623
Trade notes and accounts receivable.	3621231		4138690	
(a) Less allowance for bad debts.	5000	3616231	5000	4133690
Inventories.		4409474		3136419
Government obligations: (a) U.S. and instrumentalities				
(b) State, subdivisions thereof, etc.				
Other current assets (attach schedule)		620650		360846
Loans to stockholders.				
Mortgage and real estate loans				
Other investments (attach schedule)				
Buildings and other fixed depreciable assets.	1378164		1388868	
(Less accumulated depreciation).	508848	869316	586586	802282
Depletable assets				
(a) Less accumulated depletion.				
Land (net of any amortization)		7546		7546
Intangible assets (amortizable only)- (a) Less accumulated amortization		7661		15153
Other assets (attach schedule.		2882376		2226776
Total Assets		13086199		10891335
LIABILITIES AND STOCKHOLDERS EQUITY				
Accounts payable		724997		983972
Mortgages, notes, bonds payable in less than one year.				
Other current liabilities (attach schedule)		4105226		999109
Loans from stockholders.				
Mortgages, notes, bonds payable in one year or more.				
Other liabilities (attach schedule)				
Capital stock:				
(a) Preferred stock				
(b) Common stock.		52500		52500
Paid-in or capital surplus (attach reconciliation)				
Retained earnings - Appropriated (attach schedule)				
Retained earnings - Unappropriated		8203476		8855754
Less cost of treasury stock.				

Defendant's

Exhibit 3

Copies given separately to the Court and the
taxpayer.

(NOV 3 1977

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I

NOV 16 1977

Defendant X

This day came the applicant by its counsel asking that an order be entered. WHEREFORE it is ORDERED and ADJUDGED that the application for correction of erroneous assessment be, and hereby is, granted for the reasons stated in the Court's written opinion in this matter dated October 19, 1977, *which is hereby made a part of the record,* and that the Defendant is ordered to refund to the applicant the amounts erroneously assessed totaling \$39,031.14, including penalties and interest, together with interest at the rate of eight percent from the date this order is entered.

Cler

By Mary Ellen Nun
Deputy Clerk

Carle E. Davis,
Counsel for Applicant

Seen and signed by _____

Glenn R. Moore

V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND,
DIVISION I

MILLER-MORTON COMPANY,]	
]	
Applicant,]	
]	Case No. 7608
v.]	
]	
COMMONWEALTH OF VIRGINIA,]	
]	
]	
Defendant.]	

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

Pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia, the defendant, Commonwealth of Virginia, hereby gives notice that it will apply to the Supreme Court of Virginia for a writ of error from the final order entered herein on November 16, 1977.

Counsel for defendant gives further notice that in the Petition for Writ of Error the defendant will assign and rely upon the following assignments of error:

1. The Court erred in its conclusion that Miller-Morton's exercise of rights and powers over the tangible personal property in question did not constitute a taxable use under § 58-441.5.

2. The Court erred in its conclusion that § 58-441.6 (r) and Regulations § 1-51 (Virginia Retail Sales and Use Tax Rules and Regulations, revised July 1, 1969) operated to exclude the tangible personal property in question from the tax imposed by § 58-441.5.

3. The Court erred in its conclusion that storage is not a taxable use under the language of §§ 58-441.3(h) and

The record is filed with the Court and no additional incidents of the trial will be hereinafter filed.

Dated this 13th day of December, 1977.

COMMONWEALTH OF VIRGINIA

By JGM
John G. MacConnell
Assistant Attorney General

Anthony F. Troy
Attorney General of Virginia

John G. MacConnell
Assistant Attorney General
P. O. Box 6-L, Room 206
Richmond, Virginia 23282

CERTIFICATION

I hereby certify that the original of the foregoing Notice of Appeal and Assignment of Error has been mailed to the Clerk of this Court for filing, and a true copy thereof has likewise been mailed to Carle E. Davis, Esquire, of McGuire, Woods & Battle, 1400 Ross Building, Richmond, Virginia 23219, counsel for applicant, this 13th day of December, 1977.

JGM
Assistant Attorney General